



AGENDA

*Revised

Added II.Consent Agenda, III.2, IV Consent Agenda

Thursday, June 3, 2021 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2021-33

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*****Wild Fire Updates**

*****COVID Updates**

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

1. Approval of a Board Order for Boundary Change Proposal CL 21-001 Annexation to Clackamas County Service District No. 1
2. Approval of a Board Order for Boundary Change Proposal CL 20-002 Annexation to Clackamas County Service District No. 1
3. Approval of a Board Order for Boundary Change Proposal CL 20-005 Annexation to Clackamas County Service District No. 1

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

A. Health, Housing & Human Services

1. Approval of Amendment #3 to an Agreement with Federal Highway Administration under the Federal Lands Access Program for Operations Funding for Mt Hood Express Service to Timberline Lodge. This amendment extends the agreement for 7 months and increases the total amount by \$18,400 for a total agreement of \$1,623,408. This is funded through the Federal Highway Administration and has no general funds involved.
–Social Services
2. Approval of contract with MTR Western, LLC for the Shuttle Operation Services. The term of this contract is for \$942,504 and is funded through the State Transportation Improvement Fund. No general funds are involved. – Social Services

3. Approval of Intergovernmental Agreement #159475, Amendment 02 with the State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of the Oregon Money Management Program in Clackamas County. This is for \$458,050 and is funded through the State General Funds. No general funds are involved. – Social Services
4. Approval for the Children, Family & Community Connections (CFCC) Division of H3S to Apply to Housing Authority of Clackamas County for Supportive Housing Services. The grant maximum award is \$2,500,000. There is no match required and no general fund is involved. – CFCC
5. Approval of a Construction Contract between Clackamas County and Banlin Construction LLC for the Sandy Health Center Project. This is for \$4,738,515 and is funded through the Health Centers Divisions funds. There are no general funds involved. – Health Centers
6. Approval to Accept a Grant Award with Tides Foundation, in Partnership with Kaiser Permanente for participation in the Virtual Care Innovation Network – Clinic Connection Track. The maximum value is \$12,000 and is funded through the Tides Foundation, no general funds are involved. – Health Centers
7. Approval of HOME Loan Documents with Webster Road Housing Limited Partnership for the Webster Road Redevelopment in Gladstone, Oregon. The HOME fund is \$400,000 and is a long term loan with 0% interest deferred, no general funds are involved. – Community Development
8. Approval of Amendment #01 to an Agreement with CareOregon, Inc. regarding Crisis Respite Services provided by Cascadia Behavioral Healthcare, Inc. This contract is valued up to \$364,270 and is funded through the State of Oregon, no general funds are involved. – Behavioral Health
9. Approval of an Amendment #01 to Subrecipient Agreement with Cascadia Behavioral Healthcare, Inc. for Residential Treatment Services. This amendment adds \$12,228 for a new contract value of \$334,894. It is funded through the State of Oregon and no general funds are involved. – Behavioral Health
10. Approval of Amendment #02 to a Contract with Line for Life for Crisis Line Services. This amendment adds \$34,151 with a contract maximum of \$167,351 and is funded through the Oregon Health Plan. No general funds are involved. – Behavioral Health Division
11. Approval of Amendment #20 to the Intergovernmental Agreement with the State of Oregon acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County. This amendment adds a federal award amendment to the federal award information database, this contract maximum will remain the same at \$19,499,741. No additional funds are involved for this amendment. – Public Health
12. Approval of Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority (OHA) for access to the electronic referral system, Oregon Tobacco Quit Line. The contract maximum is \$40,000 and is funded through the Health Share of Oregon Grant, no general funds are involved. – Public Health

B. Transportation & Development

1. Approval of a Personal Services Contract with Carl D. Cox, Attorney at Law, for Land Use Hearings. Contract not to exceed \$175,000 per fiscal year with a total not to exceed amount of \$1,050,000 for six years. This is a mix of funding through Land Use Hearings officer fees and general fund.
2. Approval of a Personal Services Contract with Joe Turner, P.C., Municipal Hearing Official, for Land Use Hearings Officer. Contract not to exceed \$175,000 per fiscal year with a total not to exceed amount of \$1,050,000 for six years. This is a mix of funding through Land Use Hearings officer fees and general fund.

C. Finance

1. Approval of a Grant Agreement with the U.S. Department of Treasury for Coronavirus Local Fiscal Recovery Fund Award. This is an award of \$81.8 million. No general funds are involved.

D. Elected Officials

1. Approval of Contract #4061 with Chem Image Corporation for the purchase of Mail Scanning Equipment for the Clackamas County Jail. The purchase price is \$179,694. The funding will come through the State Forfeiture Funds. No general funds are involved. - Clackamas County Sheriff's Office
2. Request by the Clackamas County Sheriff's Office (CCSO) to Enter into an Intergovernmental Agreement with the State of Oregon through its Department of Transportation, Commerce and Compliance Division (CCD) to provide CCSO access to weight stations to assist with law enforcement activity. There is no fiscal impact for this. - Clackamas County Sheriff's Office
3. Approval of Amendment #2 to Contract #4111 with Star Cars, LLC for Sheriff's Office Vehicle Installation Services. This would add an additional \$150,000 with a new not to exceed of \$850,000 and is funded through the Sheriff's Office Budget. No general funds are involved. - Clackamas County Sheriff's Office

E. CCOM

1. Approval of a contract with Oregon Department of Forestry for acquisition of remote dispatching kits related to House Bill 5042: County Communication Infrastructure Grant Program. \$298,000 will be reimbursed from Oregon Department of Forestry. No general funds are involved.
2. Approval of a Contract with Motorola Solutions Inc. for Maintenance and Equipment of the VESTA 911 Phone System Project. The total contract over 5 years will be \$600,000 and is funded through Oregon Emergency Management and C-Com User Fees. No general funds are involved.

F. County Counsel

1. Designation of Newspaper for 2021 Property Tax Foreclosure Publication. The costs are unknown and will be funded through the Assessment and Taxation's Legal Notices Budget.

G. Technology Services

1. Approval of a Service Level Agreement between Clackamas Broadband eXchange and Link Oregon. This will be a non-recurring fee of \$2,400 for the new fiber construction and pay an annual recurring lease fee of \$3,060. This is funded through CBX budget and then reimbursed by Link Oregon. No general funds are involved.
2. Approval for a Non-Disclosure Agreement between Clackamas Broadband eXchange and Verizon Business Network Services, Inc. No fiscal impact.

H. Human Resources

1. Approval of the Labor Contract between the County of Clackamas and the Clackamas County Peace Officers' Association (POA)

I. Disaster Management

1. Approval of a sub-recipient agreement with Oregon State Fire Marshall's Office for a hazardous material exercise with the Local Emergency Preparedness Committee. The agreement is for \$17,345 with a 25% match (\$4,336). The match can and will be done with staff time, so there will be no general fund impact.

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

1. Approval of a Local Government Grant Program Agreement between the North Clackamas Parks and Recreation District and the Oregon Parks and Recreation Department for Development of Milwaukie Bay Park. The total project cost is \$1.5 Million and the required 50% match is \$750,000. North Clackamas Parks and Recreation District System Development Charge Revenue will fund the match. No general funds involved.
2. *Approval of Notice to Renew Lease Agreement Fourth Amendment/Extension with Phoenix Investment Group and North Clackamas Parks and Recreation District for District's Maintenance Shop. This lease will be for \$295,968 over 3 years and will come out of North Clackamas Parks and Recreation District General Fund.

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

1. Approval of Contract between Water Environment Services and Jacobs Engineering Group, Inc., for the Kellogg Creek Water Resource Recovery Facility Aeration Improvements. Total contract value is \$239,947 until May 1, 2022, with funding through the capital improvements plan. No general funds are involved. – Procurement
2. Approval of Amendment # 1 to Contract # 4085 between Water Environment Services and Metro Presort, Inc. for Utility Bill Printing and Mailing Services. Amendment #1 adds additional compensation of \$350,000 for a total contract of \$1,225,000 with funding through Water Environment Services Fund. No general funds are involved. – Procurement
3. Approval of Contract between Water Environment Services and Paul Brothers Inc., for the Tri-City Water Resource Recovery Facility (“WRRF”) Mitigation Planting Project. Total contract value of \$162,677 until November 1, 2021, with funding through the capital improvements plan. No general funds are involved. – Procurement

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

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

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



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
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Jeffrey D. Munns
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Andrew Narus
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Assistants

June 3, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Board Order for Boundary Change Proposal CL 21-001
Annexation to Clackamas County Service District No. 1**

Purpose/Outcomes	<i>Conduct Public Hearing/Approve Order</i>
Dollar Amount and Fiscal Impact	<i>None</i>
Funding Source	<i>Not Applicable</i>
Duration	<i>Permanent</i>
Previous Board Action	<i>None</i>
Strategic Plan Alignment	<i>Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries</i>
Contact Person	<i>Ken Martin, Boundary Change Consultant - 503 222-0955 Nate Boderman, Assistant County Counsel – 503-655-8364</i>
Contract No.	<i>Not Applicable</i>

BACKGROUND

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 21-001 is a proposed annexation to Clackamas County Service District No. 1 ("District").

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online (<https://www.clackamas.us/meetings/bcc/business/2021-06-03>); 3) Published notice twice in the Clackamas County Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.855, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 1.64 acres and is vacant.

REASON FOR ANNEXATION

The property owners desire sewer service to serve a proposed congregate living community.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-21-001, annexation to Clackamas County Service District No. 1.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 21-001

}

Order No. _____

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1; and

Whereas, It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

Whereas, It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

Whereas, It further appearing that this matter came before the Board for public hearing on June 3, 2021 and that a decision of approval was made June 3, 2021;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 21-001 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of June 3, 2021.

ADOPTED this 3rd day of June, 2021.

BOARD OF COUNTY COMMISSIONERS

Tootie Smith, Chair

Christina Terwilliger, Clerk to the Board

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 1.64 acres and is vacant.
2. The property owners desire sewer service to serve a proposed congregate living community.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership (“WES”) as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

4. Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:
 1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
 2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
 3. The proposed effective date of the boundary change.
5. Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.
6. To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
 - (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.
7. There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings below. No concept plans cover this area.
 8. Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.
 9. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the

1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

10. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

11. The territory is inside the City of Happy Valley and is zoned MCC, Mixed Commercial Center which allows for the proposed use.
12. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
13. WES, as the service provider for the District, has sewer lines available at the north edge of the property in SE Vogel Road.
14. The Sunrise Water Authority provides water service to the area from lines adjacent in SE Vogel Road.
15. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff's Department for service.
16. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 7 & 12 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County Comprehensive Plan and the Happy Valley Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services are available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 13. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

EXHIBIT B

Clackamas County Service District No. 1 Annexation Description

A portion of Parcel 1 of Partition Plat 2020-075, Clackamas County Plat Records, located in the Northeast One-Quarter of Section 6, Township 2 South, Range 3 East, Willamette Meridian, City of Happy Valley, Clackamas County, Oregon, and being more particularly described as follows:

Beginning at the northeasterly corner of said Parcel 1, also being on the easterly right-of-way line of SE Rachella Street (31.50 feet in width), and on the Clackamas County Service District No. 1 (CCSD#1) limits line; thence leaving said CCSD#1 limits line along said easterly right-of-way line the following four (4) courses: South 01°00'04" West 126.03 feet; a curve to the right with a Radius of 250.00 feet, a Delta of 43°12'01", a Length of 188.50 feet, and a Chord of South 22°36'05" West 184.06 feet; South 44°12'05" West 101.28 feet; a curve to the left with a Radius of 250.00 feet, a Delta of 19°44'05", a Length of 86.11 feet, and a Chord of South 34°20'03" West 85.68 feet to the southerly right-of-way line of SE Rachella Street; thence along said southerly right-of-way line, North 65°32'00" West 31.50 feet to the westerly right-of-way line of SE Rachella Street (31.50 feet in width), also being on said CCSD#1 limits line; thence leaving said westerly right-of-way line along said CCSD#1 limits line, North 00°50'42" East 429.60 feet to a line which is parallel with and 4.50 feet northerly of, when measured at right angles to, the southerly right-of-way line SE Vogel Road (30.00 feet from centerline); thence along said parallel line and said CCSD#1 limits line, South 89°07'01" East 214.24 feet to the Point of Beginning.

The above described tract of land contains 1.64 acres, more or less.

1/21/2021

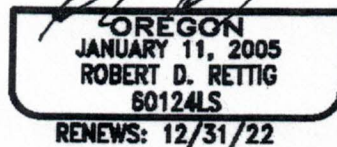
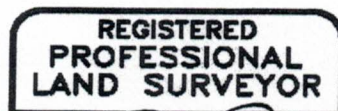


EXHIBIT C

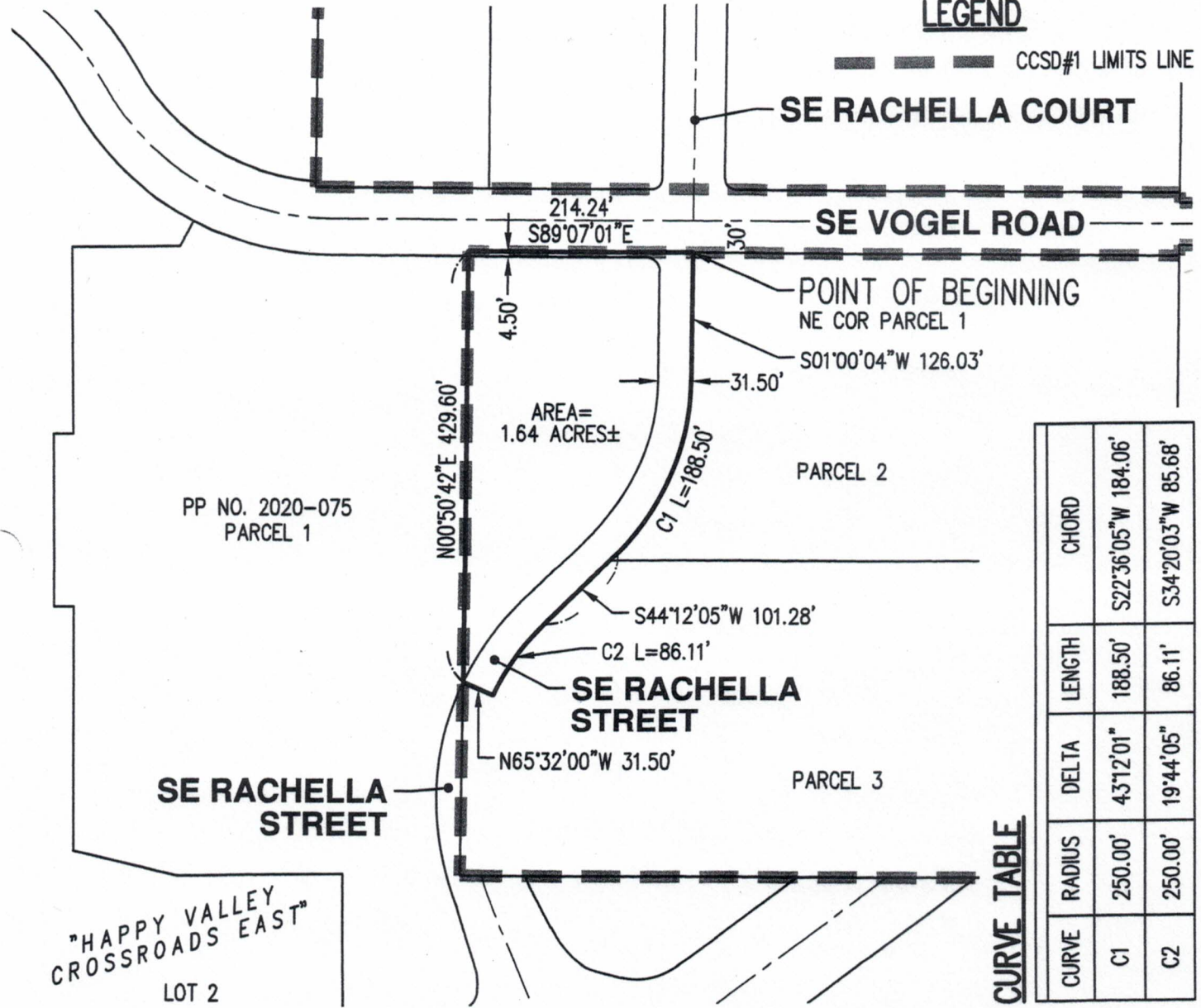
A PORTION OF PARCEL 1 OF PARTITION PLAT 2020-075,
 LOCATED IN THE NORTHEAST 1/4 OF SECTION 6,
 TOWNSHIP 2 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN,
 CITY OF HAPPY VALLEY, CLACKAMAS COUNTY, OREGON

LEGEND

--- CCSD#1 LIMITS LINE

SE RACHELLA COURT

SE VOGEL ROAD



PP NO. 2020-075
 PARCEL 1

AREA=
 1.64 ACRES±

PARCEL 2

PARCEL 3

SE RACHELLA
 STREET

SE RACHELLA
 STREET

"HAPPY VALLEY
 CROSSROADS EAST"
 LOT 2

CURVE	RADIUS	DELTA	LENGTH	CHORD
C1	250.00'	43°12'01"	188.50'	S22°36'05"W 184.06'
C2	250.00'	19°44'05"	86.11'	S34°20'03"W 85.68'

CURVE TABLE

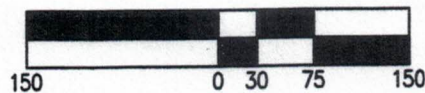
1/21/2021

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR

PREPARED FOR

SPRINGS VIII AT HAPPY VALLEY, LLC
 3330 SE THREE MILE LANE
 McMinnville, OR 97128

SCALE: 1" = 150 FEET



CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
 ANNEXATION MAP

EXHIBIT
B

OREGON
 JANUARY 11, 2005
 ROBERT D. RETTIG
 60124LS

RENEWS: 12/31/22

AKS ENGINEERING & FORESTRY, LLC
 12965 SW HERMAN RD, STE 100
 TUALATIN, OR 97062
 503.563.6151 WWW.AKS-ENG.COM

AKS

DRWN: WCB
 CHKD: RDR
 AKS JOB:
 5177-04



OFFICE OF COUNTY COUNSEL

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

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Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

June 3, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Board Order for Boundary Change Proposal CL 20-002
Annexation to Clackamas County Service District No. 1**

Purpose/Outcomes	<i>Conduct Public Hearing/Approve Order</i>
Dollar Amount and Fiscal Impact	<i>None</i>
Funding Source	<i>Not Applicable</i>
Duration	<i>Permanent</i>
Previous Board Action	<i>None</i>
Strategic Plan Alignment	<i>Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries</i>
Contact Person	<i>Ken Martin, Boundary Change Consultant – 503-222-0955 Nate Boderman, Assistant County Counsel - 503-655-8364</i>
Contract No.	<i>Not Applicable</i>

BACKGROUND

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 20-002 is a proposed annexation to Clackamas County Service District No. 1 (“District”).

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online (<https://www.clackamas.us/meetings/bcc/business/2021-06-03>); 3) Published notice twice in the Clackamas County Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.855, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 2.91 acres, one single family dwelling, a population of 1 and is valued at \$525,427.

REASON FOR ANNEXATION

The property owners desire sewer service to replace a failing septic system.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-20-002, annexation to Clackamas County Service District No. 1.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 20-002

}

Order No. _____

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1;

Whereas, It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

Whereas, It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

Whereas, It further appearing that this matter came before the Board for public hearing on June 3, 2021 and that a decision of approval was made June 3, 2021;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 20-002 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of June 3, 2021.

ADOPTED this 3rd day of June, 2021.

BOARD OF COUNTY COMMISSIONERS

Tootie Smith, Chair

Christina Terwilliger, Clerk to the Board

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 2.91 acres, one single family dwelling, a population of 1 and is valued at \$525,427.
2. The property owners desire sewer service to replace a failing septic system.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership (“WES”) as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

4. Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:
 - a. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
 - b. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
 - c. The proposed effective date of the boundary change.
5. Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.
6. To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
 - (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.
7. There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings below. No concept plans cover this area.
 8. Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.
 9. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the

1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

10. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

11. The territory is inside the City of Happy Valley and has a zoning designation of MUR-A, Mixed Use Residential - Attached. No redevelopment is being proposed at this time.
12. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
13. WES, as the service provider for the District, has a 24 inch sewer line in Rock Creek adjacent to the site.
14. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff's Department for service.
15. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 7 & 12 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County Comprehensive Plan and the Happy Valley Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services can be made available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 13. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.

EXHIBIT "B"
LEGAL DESCRIPTION

DESCRIBED AS PARCEL 2 IN DEED DOCUMENT 2020-064548 RECORDED IN CLACKAMAS COUNTY RECORDERS OFFICE, LYING IN THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, STATE OF OREGON MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 5 OF "HAPPY VALLEY CROSSROADS" PLAT No. 4430, RECORDED IN THE CLACKAMAS COUNTY RECORDERS OFFICE; THENCE SOUTH 89°13'40" EAST ALONG THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 178.80 FEET TO THE SOUTHWEST CORNER OF LOT 5 "TUREL ESTATES" PLAT No. 3632 RECORDED IN THE CLACKAMAS COUNTY RECORDERS OFFICE; THENCE NORTH 0°00'00" EAST ALONG THE WEST LINE OF SAID LOT 5 "TUREL ESTATES" A DISTANCE OF 107.90 FEET TO A 5/8 INCH IRON ROD; THENCE SOUTH 89°13'40" WEST, A DISTANCE OF 720.40 FEET; THENCE SOUTH 0°00'00" EAST, A DISTANCE OF 160.00 FEET; THENCE SOUTH 89°13'40" EAST, AND DISTANCE OF 200.00 FEET; THENCE SOUTH 0°00'00" EAST A DISTANCE OF 140.00 FEET; THENCE NORTH 44°24'32" EAST, A DISTANCE OF 140.00 FEET; THENCE NORTH 89°13'40" EAST, A DISTANCE OF 244.15 FEET TO THE WEST LINE OF LOT 5 OF "HAPPY VALLEY CROSSROADS" PLAT No. 4430; THENCE NORTH 0°17'20" WEST ALONG SAID WEST LINE, A DISTANCE OF 103.61 FEET TO THE POINT OF BEGINNING.

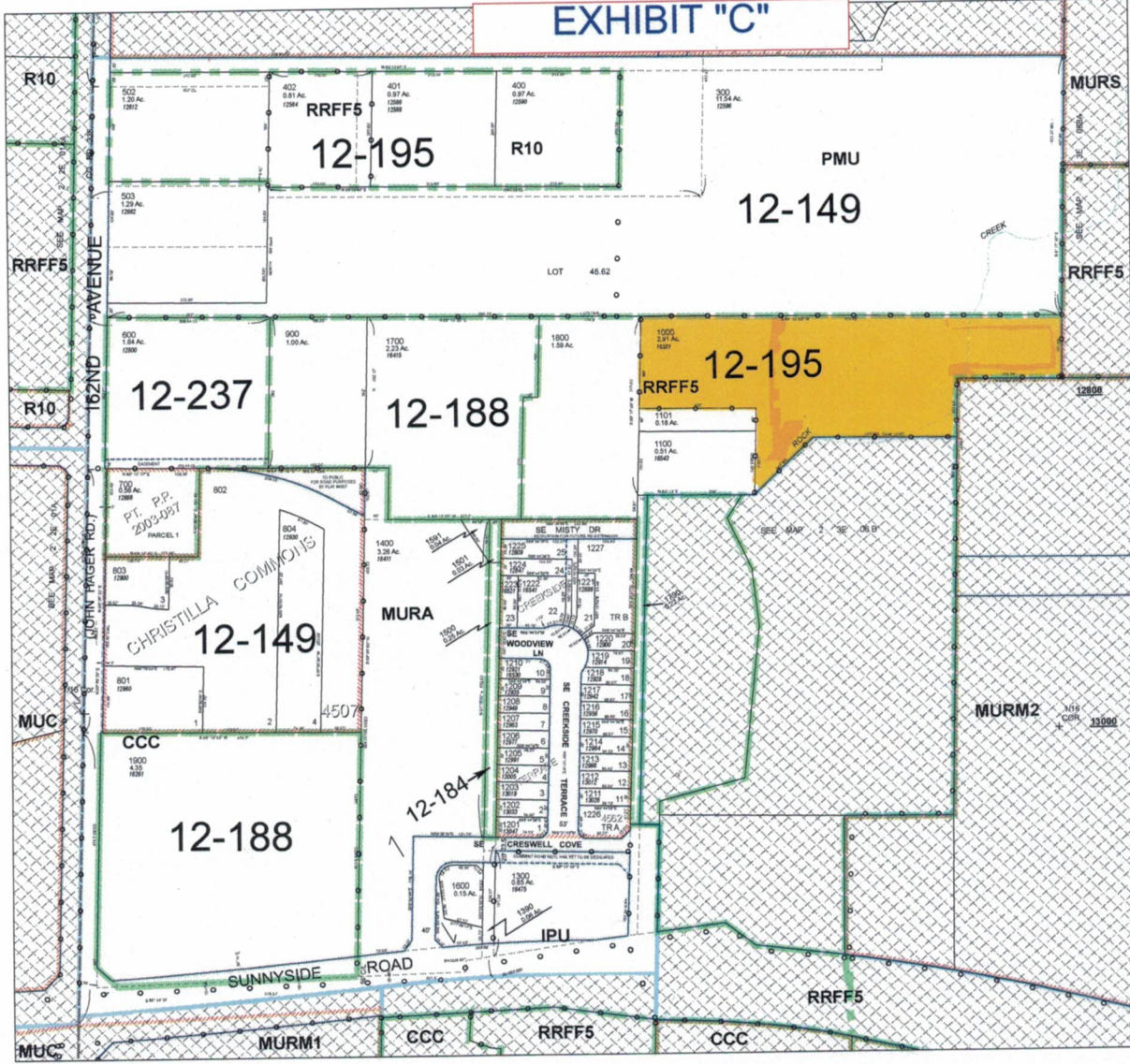
CONTAINING 2.91 ACRES MORE OR LESS.

BASIS OF BEARING IS THE NORTH LINE OF THIS PARCEL ALSO BEING THE SOUTH LINE OF RECORD OF SURVEY SN 2004-205 BEING NORTH 89°13'40" WEST

EXHIBIT "C"

2 3 E 06BB

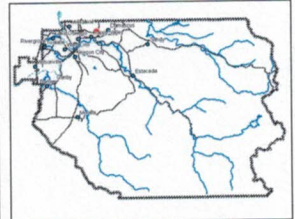
N.W. 1/4 N.W. 1/4 SEC. 6 T.2S. R.3E. W.M.
CLACKAMAS COUNTY
1" = 100'



Cancelled Taxlots

791
800
100
200
301
300
1200
800
891
490
1500

- Parcel Boundary
- - - Private Road ROW
- - - Historical Boundary
- - - Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 47
- Historic Corridor 207



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY



1/21/2020

2 3 E 06BB

EXHIBIT "C"

LYING IN THE NORTHWEST QUARTER OF THE NORTHWEST
QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 3 EAST,
WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, STATE OF OREGON

TAX LOT BB00300
PER DOC. 2013-025909

BASIS OF BEARINGS

FOUND 5/8 INCH IRON ROD
PER SURVEY

S89°13'40"W

720.40'

FOUND 3/4 INCH IRON PIPE

160.00'
S0°00'00"E

ANNEXATION AREA

PARCEL 2
PER 2020-064548
TAX LOT BB01000

P.O.B.

FOUND 3/4
INCH IRON PIPE
SW COR. LOT 5

LOT 5
TUREL ESTATES
PLAT No. 3632

107.90'
N0°00'00"E

S89°13'40"E

178.80'

FOUND 1/2 INCH IRON PIPE
NW COR. LOT 5

LOT 5
HAPPY VALLEY
CROSSROADS
PLAT No. 4430

S89°13'40"E 200.00'

PARCEL 3
PER 2020-064548

140.00'

N89°13'40"E 244.15'

103.61'
N01°17'20"W

TAX LOT 1100
PER DOC. 1991-027508

S0°00'00"E

N44°24'32"E
140.00'

TAX LOT B300
PER DOC. 2020-037836

NOT TO SCALE

PAGE _____

DOR 3-P608-2020
REVISION 01/28/2021



OFFICE OF COUNTY COUNSEL

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

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Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

June 3, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Board Order for Boundary Change Proposal CL 20-005
Annexation to Clackamas County Service District No. 1**

Purpose/Outcomes	<i>Conduct Public Hearing/Approve Order</i>
Dollar Amount and Fiscal Impact	<i>None</i>
Funding Source	<i>Not Applicable</i>
Duration	<i>Permanent</i>
Previous Board Action	<i>None</i>
Strategic Plan Alignment	<i>Build Public Trust Through Good Government, hold transparent and clear public processes regarding jurisdictional boundaries</i>
Contact Person	<i>Ken Martin, Boundary Change Consultant - 503 222-0955 Nate Boderman, Assistant County Counsel – 503-655-8364</i>
Contract No.	<i>Not Applicable</i>

BACKGROUND

The County Board is charged with making boundary change decisions (annexations, withdrawals, etc.) for many types of special districts (water, sanitary sewer, rural fire protection, etc.) within the County. One type of special district over which the Board has jurisdiction is a county service district and Clackamas County Service District No. 1 is such a district.

Proposal No. CL 20-005 is a proposed annexation to Clackamas County Service District No. 1 (“District”).

State statute and the Metro Code require the Board to hold a public hearing on the proposed annexation. Notice of this hearing invited testimony from any interested party. Notice consisted of: 1) Posting three notices near the territory and one notice near the County hearing room 20 days prior to the hearing; 2) Notice posted online (<https://www.clackamas.us/meetings/bcc/business/2021-06-03>); 3) Published notice twice in the Clackamas County Review; 4) Mailed notice sent to affected local governments and all property owners within 100 feet of the area to be annexed.

As required by statute the Board of the District has endorsed the proposed annexation. Also as required by statute (ORS 198.720(1)) the City of Happy Valley has approved this petition.

This proposal was initiated by a consent petition of property owners. The petition meets the requirement for initiation set forth in ORS 198.855, ORS 198.750 (section of statute which specifies contents of petition) and Metro Code 3.09.040(a) (lists Metro's minimum requirements for petition). If the Board approves the proposal the boundary change will become effective immediately.

The territory to be annexed is located generally in the eastern part of the District. The territory contains 10.03 acres, one single family dwelling, a population of one and is valued at \$2,147,260.

REASON FOR ANNEXATION

The property owners desire sewer service to serve a proposed 20-lot subdivision.

CRITERIA

Oregon Revised Statute 198 directs the Board to "consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district."

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership ("WES") as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
3. The proposed effective date of the boundary change.

Service availability is covered in the proposed findings. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date (immediately upon adoption) was noted above.

To approve a boundary change, the reviewing entity [the County Board] must apply the

¹ A "necessary party" is another governmental entity which includes the same area or provides an urban service to the area.

following criteria:

To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
- (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.

There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings attached in the proposed order. No concept plans cover this area.

Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District. A draft order with proposed findings is attached hereto for the Board's consideration. The territory, if annexed into the District, will be served by Water Environment Services pursuant to that certain ORS 190 Partnership entered into by the District with the Tri-City Service District and the Surface Water Management Agency of Clackamas County, as amended from time to time.

RECOMMENDATION

Based on the attached Order and Findings, Staff recommends approval of Proposal No. CL-20-005, annexation to Clackamas County Service District No. 1.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

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

In the Matter of Approving
Boundary Change Proposal
No. CL 20-005

}

Order No. _____

This matter coming before the Board at this time, and it appearing that the owner of all the land in the territory to be annexed has petitioned to annex the territory to Clackamas County Service District No. 1; and

Whereas, It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198 and Metro Code 3.09; and

Whereas, It further appearing that staff retained by the County have reviewed the proposed boundary change and issued a report which complies with the requirements of Metro Code 3.09.050(b); and

Whereas, It further appearing that this matter came before the Board for public hearing on June 3, 2021 and that a decision of approval was made June 3, 2021;

NOW, THEREFORE, IT IS HEREBY ORDERED that Boundary Change Proposal No. CL 20-005 is approved for the reasons stated in attached Exhibit A and the territory described in Exhibit B and depicted on Exhibit C is annexed to Clackamas County Service District No. 1 as of June 3, 2021.

ADOPTED this 3rd day of June, 2021.

BOARD OF COUNTY COMMISSIONERS

Tootie Smith, Chair

Christina Terwilliger, Clerk to the Board

FINDINGS

Based on the study and the public hearing the Board found:

1. The territory to be annexed contains 10.03 acres, one single family dwelling, a population of one and is valued at \$2,147,260.
2. The property owners desire sewer service to serve a proposed 20-lot subdivision.
3. Oregon Revised Statute 198 directs the Board to “consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.”

Clackamas County Service District No. 1 and the City of Happy Valley do have an agreement calling for the District to be the provider of sewers inside the City. The District has entered into an agreement with the Surface Water Management Agency of Clackamas County and the Tri-City Service District to create Water Environment Services, an ORS 190 partnership (“WES”) as a collective service provider for all three districts. If annexed into the District, the property would be served by WES under such agreement.

4. Additional criteria can be found in the Metro Code. The code requires a report which addresses the criteria listed below and which includes the following information:
 1. The extent to which urban services are available to serve the affected territory, including any extraterritorial extensions of service;
 2. Whether the proposed boundary change will result in the withdrawal of territory from the legal boundary of any necessary party¹; and
 3. The proposed effective date of the boundary change.
5. Service availability is covered in the findings below. Staff has examined the statutes and determined that approval of this annexation will not cause the withdrawal of the affected territory from the boundary of any necessary party. The proposed effective date is immediately upon adoption.
6. To approve a boundary change, the reviewing entity [the County Board] must apply the following criteria:

To approve a boundary change the County must:

¹ A “necessary party” is another governmental entity which includes the same area or provides an urban service to the area.

- (1) Find that the change is consistent with expressly applicable provisions in:
 - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
 - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
 - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
 - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
 - (E) Any applicable comprehensive plan;
 - (F) Any applicable concept plan; and
 - (2) Consider whether the boundary change would:
 - (A) Promote the timely, orderly and economic provision of public facilities and services;
 - (B) Affect the quality and quantity of urban services; and
 - (C) Eliminate or avoid unnecessary duplication of facilities and services.
7. There are no cooperative agreements, urban service agreements or annexation plans specifically adopted pursuant to ORS 195 in effect in this area. The proposal is consistent with the Comprehensive Plans as stated in the findings below. No concept plans cover this area.
 8. Staff has reviewed both the ORS 198 criteria and the Metro Code requirements, and found that the subject property is eligible for annexation to the District.
 9. This territory is inside of Metro's jurisdictional boundary and inside the regional Urban Growth Boundary (UGB).

The law that requires Metro to adopt criteria for boundary changes specifically states that Metro shall “. . . ensure that a boundary change is in compliance with the Metro regional framework plan as defined in ORS 197.015 and cooperative agreements and urban service agreements adopted pursuant to ORS chapter 195.” ORS 197.015 says “Metro regional framework plan means the regional framework plan required by the

1992 Metro Charter or its separate components.” The Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes.

There are two adopted regional functional plans, the Urban Growth Management Functional Plan and the Regional Transportation Plan, which were examined and found not to contain any directly applicable standards and criteria for boundary changes.

10. The PUBLIC FACILITIES AND SERVICES Element of the Comprehensive Plan contains the following Goal:

POLICIES

Sanitary Sewage Disposal

* * *

- 6.0 Require sanitary sewerage service agencies to coordinate extension of sanitary services with other key facilities, i.e., water, transportation, and storm drainage systems, which are necessary to serve additional lands.

11. The territory is inside the City of Happy Valley and is zoned R-15/R-20, Single Family.
12. ORS 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. There are no urban service agreements under ORS 195 relative to sewer service in this area of Clackamas County.
13. WES, as the service provider for the District, has 8-inch sewer lines available to the east and west of the property which can be extended to serve the site.
14. The Sunrise Water Authority provides water service to the area.
15. The area receives police service from the City of Happy Valley which contracts with the Clackamas County Sheriff’s Department for service.
16. The territory is within the Clackamas County R.F.P.D. #1. This service will not be affected by annexation to the County Service District for sanitary sewers.

CONCLUSIONS AND REASONS FOR DECISION

Based on the Findings, the Board determined:

1. The Metro Code requires the boundary change decision to be consistent with expressly applicable provisions in any urban service provider agreements, cooperative agreements and annexation plans adopted pursuant to ORS 195. As noted in Findings 7 & 12 there are no such agreements or plans in place in this area. The Board concludes that its decision is not inconsistent with any such agreements and plans.
2. The Metro Code calls for consistency between the Board decision and any "applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services." The Board notes the original public facility plan for this area does call for sewer service by the District.
3. ORS 198 requires consideration of the comprehensive plan and any service agreements affecting the area. The Board has reviewed the applicable comprehensive plans (Clackamas County Comprehensive Plan and the Happy Valley Comprehensive Plan) and concludes this proposal complies with them. All other necessary urban services are available.
4. The Board considered the timing & phasing of public facilities to this area, the quantity and quality of services available and the potential for duplication of services. The District, through Water Environment Services, has service available to the area to be annexed as noted in Finding No. 13. The Board concludes this annexation is timely, the District has an adequate quantity and quality of services available and that the services are not duplicative.
5. The Metro Code at 3.09.050 (B) (2) requires a determination of whether the boundary change will cause withdrawal of the territory from the boundary of any necessary party. An examination of this issue found that no such withdrawals would be caused by approval of this annexation.



KLS Surveying Inc.
1224 Alder Street
Vernonia, OR 97064

Phone: (503) 429-6115
Fax: (866) 297-1402
Email: dwallace_kls@msn.com

Revised 3/12/21

EXHIBIT B

Annexation legal description

A tract of land in the Northeast one-quarter of section 36, Township 1 South, Range 2 East, of the Willamette meridian, Clackamas county Oregon being more particularly described as follows:

Beginning at the Northeast corner of said section 36; thence South $0^{\circ}29'16''$ West, along the East line of the Northeast one-quarter of said section 36, a distance of 594.58 feet; thence North $88^{\circ}41'13''$ West parallel to the North line of said Northeast one-quarter, a distance of 666.46 feet; thence South $2^{\circ}01'20''$ East, a distance of 726.58 feet; thence North $88^{\circ}41'13''$ West, parallel with the North line of said Northeast one-quarter, a distance of 25.04 feet; thence North $2^{\circ}01'20''$ West, a distance of 1,322.10 feet, to the North line of said Northeast one-quarter; thence South $88^{\circ}41'13''$ East along said North line, a distance of 717.59 feet to the point of beginning.

Containing 10.03 acres more or less.

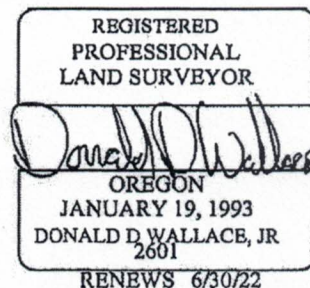
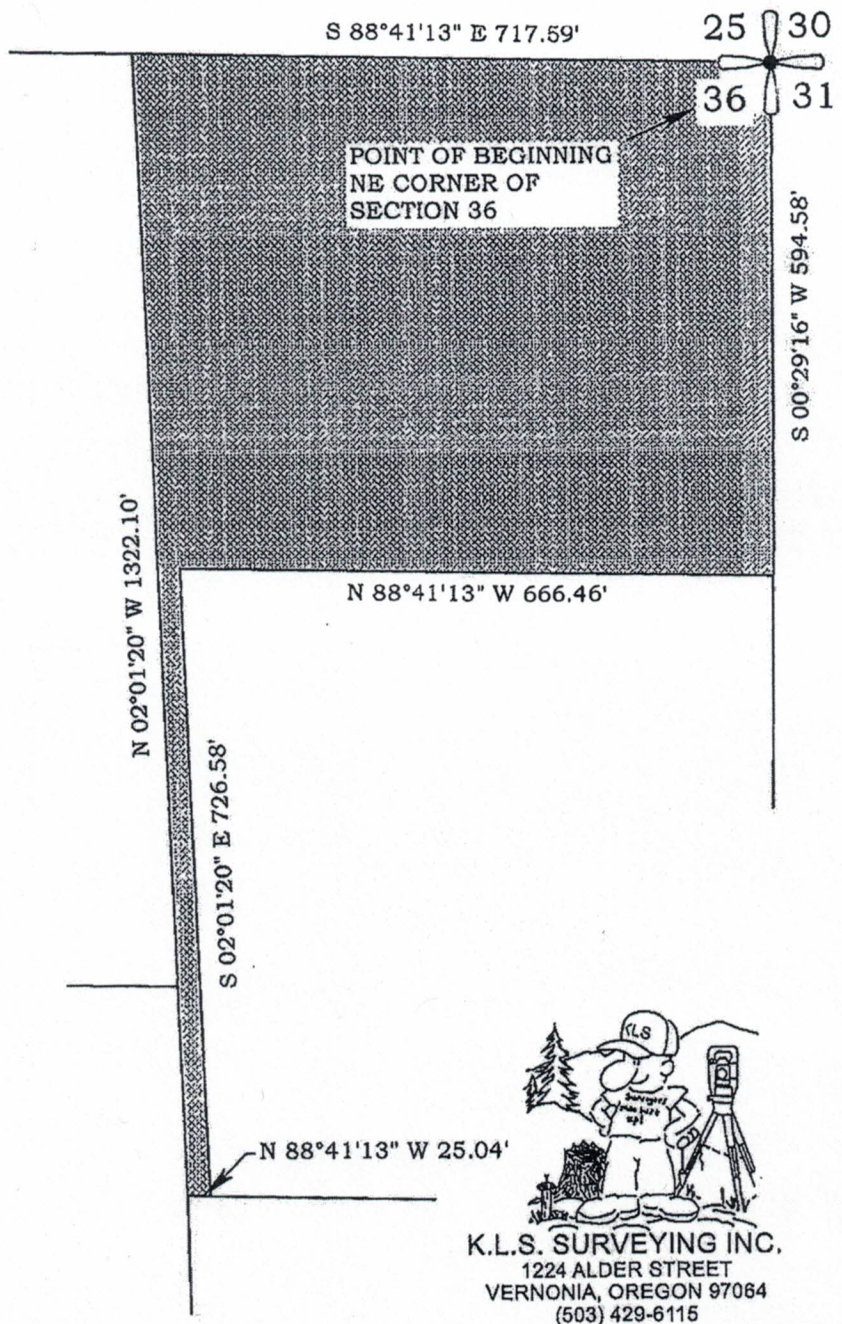


EXHIBIT C

ANNEXATION EXHIBIT
FOR MARK BOURASSA
IN THE NE 1/4 OF SECTION 36,
T1S, R2E, W.M.
CLACKAMAS COUNTY, OREGON



200 Ft/In
DWG NO. Anexation
JOB NO. 18-087
3-2-2021
Revised 3/12/21



K.L.S. SURVEYING INC.
1224 ALDER STREET
VERNONIA, OREGON 97064
(503) 429-6115

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Donald D Wallace, Jr
OREGON
JANUARY 19, 1993
DONALD D WALLACE, JR
2601
RENEWS 6/30/20

June 10, 2021

Board of Commissioners
Clackamas County

Dear Board of County Commissioners:

Approval of Amendment #3 to an Agreement with Federal Highway Administration
under the Federal Lands Access Program for Operations Funding
for Mt Hood Express Service to Timberline Lodge

Purpose/Outcomes	Approval for a grant amendment with the Federal Highway Administration for the Mt Hood Express bus service. This grant amendment would extend funding for bus service between the City of Sandy, Government Camp and Timberline, and the other communities along Hwy-26 for an additional seven months
Dollar Amount and Fiscal Impact	Amendment #3 extends the agreement for 7 months to 11/30/2021 and increases total agreement by \$18,400 for a total agreement amount of \$1,623,408. No county general fund is involved.
Funding Source	Federal Highway Administration, 2016 Oregon Federal Lands Access Program
Duration	February 1, 2018 to November 30, 2021
Previous Board Action	Board order # 082913-A1 and 061115-A6 and 032218-H1
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
Counsel Review	KR reviewed and approved this document originally on 02/20/13. Amendment 3 was reviewed and approved by AN 05/06/21.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S#6386

The Social Services Division of the Department of Health, Housing and Human Services requests approval for a Federal Lands Access Program Match agreement amendment from the Federal Highway Administration to increase the grant agreement by \$18,400. This increase would fund operations for the Mt Hood Express through November, 2021, and continue an early morning bus run that was added to better meet demand. The total amount of the grant would be increased to \$1,623,408 by this amendment.

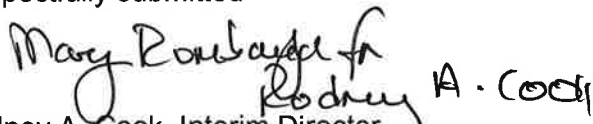
Clackamas County Social Services (CCSS) has operated the Mt Hood Express public transit service since 2007. In October, 2013, bus service expanded to go to Government Camp and Timberline to improve access to employment and recreation, reduce vehicle traffic and improve parking. Currently the bus provides six runs daily between the City of Sandy, Government Camp and Timberline, along with other locations in the Mt. Hood area with additional service during the winter season.

The amendment would have no effect on staffing and the match requirements would be met by the local business partners in a public-private partnership.

RECOMMENDATION:

Staff recommend recommends the approval of this agreement, and that the H3S Director; or their designee, be authorized to sign all documents necessary to accomplish this action on behalf of the Board of Commissioners.

Respectfully submitted

Handwritten signature of Rodney A. Cook in black ink. The signature is written in a cursive style and includes the name 'Rodney A. Cook'.

Rodney A. Cook, Interim Director
Health, Housing and Human Services

INTERAGENCY AGREEMENT		1. IAA NO. DTFH7014E00019L/0003		PAGE OF 1 2	
2. ORDER NO.		3. REQUISITION NO. HFLWRA210024PR		4. SOLICITATION NO.	
5. EFFECTIVE DATE See Block 26c		6. AWARD DATE		7. PERIOD OF PERFORMANCE 01/01/2014 TO 11/30/2021	
8. SERVICING AGENCY CLACKAMAS COUNTY OF DUNS: 096992656 2051 KAEN RD OREGON CITY OR 970451819 POC Teresa Christopherson TELEPHONE NO 503-650-5718			9. DELIVER TO Federal Highway Administration Western Federal Lands Highway Div. 610 E. 5th St. Vancouver WA 98661-3801 USA		
10. REQUESTING AGENCY Western Federal Lands Highway Div ALC: 69050001 DUNS: 139768597 Federal Highway Administration Western Federal Lands Highway Div 610 East Fifth Street Vancouver WA 98661-3801 POC Susan Law TELEPHONE NO 360-619-7840			11. INVOICE OFFICE Federal Highway Administration Western Federal Lands A/P Branch, AMZ-150 PO Box 268865 Oklahoma City OK 73125		
12. ISSUING OFFICE Federal Highway Administration Western Federal Lands Highway Div. 610 East Fifth Street Vancouver WA 98661-3801			13. LEGISLATIVE AUTHORITY FEDERAL LANDS ACCESS PROGRAM (23 U.S.C.204)		
			14. PROJECT ID OR DOT 26(1)		
			15. PROJECT TITLE MT. HOOD EXPRESS TRANSIT SERVICE		
16. ACCOUNTING DATA See Schedule					
17. ITEM NO.	18. SUPPLIES/SERVICES	19. QUANTITY	20. UNIT	21. UNIT PRICE	22. AMOUNT
	The purpose of Amendment No. 0003 is to add additional funds and extend the ending date for this Agreement. 1. Section II. Cost Budget: This Agreement is hereby increased by \$18,400.00 from \$1,605,008.00 to amended total of \$1,623,408.00 by reason of this amendment. 2. Section III. TERM OF AGREEMENT-Period of Performance: This Agreement is hereby extended Continued ...				
23. PAYMENT PROVISIONS			24. TOTAL AMOUNT \$18,400.00		
25a. SIGNATURE OF GOVERNMENT REPRESENTATIVE (SERVICING)			26a. SIGNATURE OF GOVERNMENT REPRESENTATIVE (REQUESTING)		
25b. NAME AND TITLE		25c. DATE	26b. CONTRACTING OFFICER NAMRATA BATTAN		26c. DATE

from May 1, 2021 to November 30, 2021 by reason of this Amendment.

ALL OTHER PROVISIONS OF THE ORIGINAL AGREEMENT REMAIN THE SAME.

Add Item 00004 as follows:

00004

RA Amendment Increase in Funding

18,400.00

Project Data:

1517412013016.531.CN.K200.41.1741000000.25304.04 /1 9/2021

Accounting Info:

15X0G20050.0000.117K200531.1741000000.25304.6100 66

00.0000000000.0000000000.0000000000.0000000000

Funded: \$18,400.00

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of contract with MTR Western, LLC for the
Shuttle Operation Services

Purpose/Outcomes	The purpose of this agreement is for MTR Western to provide daily operation services for the Oregon City and Clackamas Industrial Last Mile Shuttles. This contract will be for operations for the Last Mile Shuttles in Clackamas County.
Dollar Amount and Fiscal Impact	The initial term of the Contract is for \$942,504.00.
Funding Source	State Transportation Improvement Fund (STIF)
Duration	Upon signature of both parties until June 30, 2023, with an option to renew for three (3) additional 1-year terms upon approval of both parties.
Previous Board Action	None.
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/>
Counsel Review	1. Date of Counsel Review: 5/24/2021 2. Initials of County Counsel performing review: AN
Contact Person	Teresa Christopherson 503-650-5718
Contract No.	County Contract #10185

BACKGROUND:

The Social Services Division of the Health, Housing & Human Services Department (H3S) requests the approval of an Agreement with MTR Western, LLC to provide shuttle operation services for the Oregon City and Clackamas Industrial Last Mile Shuttles.

TriMet's HB 2017 Transit Advisory Committee approved \$3 million, annually, in STIF funding for the Regional Coordination Program (RCP) for last mile shuttles within the TriMet District and/or services that help reduce fragmentation between TriMet and communities outside TriMet's service district, but inside Clackamas. As part of the RCP projects, Clackamas County received approval to implement Last Mile Shuttle operations in Oregon City and the Clackamas Industrial area.

Total amount of the agreement is \$942,504.00. No County General Funds are involved.

Healthy Families. Strong Communities.

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

www.clackamas.us

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on December 14, 2020. Proposals were opened on January 14, 2021. The evaluation committee comprised of six evaluators. The County received a total of 4 proposals. Two of the four proposals were rejected because the responding firms did not submit all the required documentation. Of the two remaining firms, the evaluation team scored MV Transportation, Inc. the highest and was awarded the Contract. However, County was unable to successfully negotiate a contract with MV Transportation, Inc, therefore negotiations were terminated and the award was given to the next highest scored proposer, MTR Western, LLC.

RECOMMENDATION:

Staff recommends approval the Contract with MTR Western, LLC.

Respectfully submitted,

*Mary Beaubien for
Rodney A. Cook*

Rodney Cook, Interim Director
Health, Housing and Human Services Department

Placed on the _____ agenda by the Procurement Division

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10185

Board Order #:

Division: SS

Contact: Christopherson, Teresa

Program Contact:

Babcock, Kristina

Subrecipient

Revenue

Amend # \$

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

Date: _____

CONTRACT WITH: MTRWestern, LLC

CONTRACT AMOUNT: \$942,504.00

TYPE OF CONTRACT

Agency Service Contract

Construction Agreement

Intergovernmental Agreement

Interagency Services Agreement

Memo of Understanding/Agreement

Professional, Technical & Personal Services

Property/Rental/Lease

One Off

DATE RANGE

Full Fiscal Year _____ - _____

Upon Signature _____ - 06/30/2023

Other _____ - _____

4 or 5 Year _____ - _____

Biennium _____ - _____

Retroactive Request? _____ - _____

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability:

Yes

No, not applicable

No, waived

If no, explain why: _____

Business Automobile Liability:

Yes

No, not applicable

No, waived

If no, explain why: _____

Professional Liability:

Yes

No, not applicable

No, waived

If no, explain why: _____

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No

Yes (must have CC approval-next box)

N/A

(Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Andrew Naylor

Date Approved: Monday, May 24, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: Brenda Durbin

Digitally signed by Brenda Durbin
Date: 2021.05.24 16:51:51 -07'00'

Date: _____

H3S Admin
Only

Date Received: _____

Date Signed: _____

Date Sent: _____

AGREEMENTS/CONTRACTS

X	New Agreement/Contract
	Amendment/Change Order Original Number _____

ORIGINATING COUNTY

DEPARTMENT: Health, Housing Human Services
Social Services

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT: MTRWestern, LLC

BOARD AGENDA ITEM

NUMBER/DATE: _____

DATE: _____

PURPOSE OF

CONTRACT/AGREEMENT: Provide operations services for the Oregon City and Clackamas Industrial Last Mile Shuttles

H3S CONTRACT NUMBER: 10185



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
County Contract #4078**

This Personal Services Contract (this "Contract") is entered into between **MTR Western, LLC** ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Health Housing and Human Services Social Services Division.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2023**. This Contract may be renewed for up to three (3) additional one-year terms, to be exercised by execution of a written amendment on terms and conditions approved by both parties. The optional renewal of this Contract is expressly subject to availability of funds, as determined by County in its sole discretion.
- 2. Scope of Work.** Contractor shall provide the following personal services: Shuttle Operations Services ("Work"), as noted in RFP 2020-83, issued by the Clackamas County on December 14, 2020. The Modified Scope of Work is further described in **Exhibit A**.
- 3. Consideration.** For the initial two-year term of the Contract, the County agrees to pay Contractor, from available and authorized funds, a sum not to exceed nine hundred forty two thousand five hundred and four dollars (**\$942,504.00**) for accomplishing the Work required by this Contract. This amount includes the following: (i) fixed hourly rates for performing the Work (**Exhibit B**); (ii) up to \$80,000 per Contract year for fleet maintenance reimbursements; and (iii) future expansion up to \$100,000 the first year and \$100,000 the second year for changes to the hours and routes described in Exhibit A, Scope of Work. Any change to hours and/or routes shall be made in writing on terms mutually acceptable to the parties.

Consideration rates during the term of this Contract, including any optional renewal period, are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**, Summary Fee Schedule and **Exhibit D**, Contractors Proposal. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A and Exhibit B.

County's performance under this Contract, including any optional renewal, is contingent upon County receiving funds from the State of Oregon under HB 2017 HB 2017 Keep Oregon Moving State Payroll Tax. – Statewide Transportation Improvement Funds (STIF) Regional Coordination Program, attached hereto as **Exhibit C**. In no event will County be obligated to perform under this Contract if funds are not actually received from the State of Oregon under the Agreement.

- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Kristina Babcock, kbabcock@clackamas.us and Teresa Christopherson, teresachr@clackamas.us.

5. **Travel and Other Expense.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

6. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, Exhibit C, and Exhibit D.

7. **Contractor and County Contacts.**

Contractor	County
Administrator: Amanda Emery Phone: 206-687-8549 Email: amandae@mtrwestern.com	Administrator: Teresa Christopherson Phone: 503-650-5718 Email: teresachr@clackamas.us

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

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of

Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which is caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property to the extent caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

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

9. **INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below and in accordance with Appendix B, Insurance Requirements in the Scope of Work. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

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

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. The parties expressly acknowledge and agree that Contractor will be licensing software and computer programs for its performance under this Contract and in no way shall County acquire ownership to the software as a result of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 16, 17, 20, 21, 25, 27, 29, 30, and 31 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

16. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon sixty (60) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure; or (C) by Contractor for convenience upon one hundred and eighty (180) days' written notice to County provided, however, that Contractor shall cooperate with County, to the maximum extent practicable, to effectuate a safe and orderly transition of the Work to a new service provider, if applicable.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

20. REMEDIES. If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

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

22. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

23. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this

Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
25. **WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
26. **PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
 - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
27. **NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
28. **CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.
29. **FURTHER ASSURANCES.** Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional documentation necessary for County to comply with applicable State or Federal funding requirements.
30. **ADDITIONAL TERMS AND CONDITIONS.** Contractor agrees to comply with the applicable terms and conditions set forth in Agreement, attached hereto as **Attachment C**, Federal Transit Administration Requirements which terms and conditions shall be incorporated herein. Those additional terms and conditions include, but are not necessarily limited to, the following:
 - a) Records: Contractor shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Contract in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. The State of Oregon, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the

Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds provided hereunder, or the project for the purpose of making audits and examinations. In addition, the State of Oregon, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Contractor shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the project, and to inspect all vehicles, real property, facilities and equipment purchased by Contractor as part of the project, and any transportation services rendered by Contractor.

b) Indemnification:

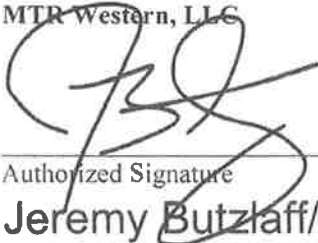
- i) Contractor shall indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the parties that the State of Oregon shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State of Oregon, be indemnified by Contractor from and against any and all Claims.
 - ii) Neither Contractor, nor any attorney engaged by Contractor, shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor is prohibited from defending State of Oregon or that Contractor is not adequately defending State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Contractor if the State of Oregon elects to assume its own defense.
 - iii) Contractor shall obtain and maintain insurance of the types and in the amounts provided in Exhibit C to the Agreement. Any insurance obtained by Contractor, if any, shall not relieve Contractor of the requirements of this Section of the Contract. Contractor, if it employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C of the Agreement.
- c) Federal certifications and requirements. Contractor must comply with all applicable federal requirements contained in the Certifications and Assurances available at www.transit.dot.gov. The Certifications and Assurances, including as they may be changed during the term of this Contract, are by this reference incorporated herein.
- d) Antidiscrimination. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as County deems appropriate.

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

SIGNATURE PAGE FOLLOWS

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

MTR Western, LLC



5-20-21

Authorized Signature

Date

Jeremy Butzlaff/President

Name / Title (Printed)

736157-92 FLLC / Washington

Oregon Business Registry #

Clackamas County

Chair

Recording Secretary

Date

Approved as to Form:

Andrew Naylor

Digitally signed by Andrew Naylor
Date: 2021.05.24 08:26:05 -07'00'

County Counsel

Date

**EXHIBIT A
MODIFIED SCOPE OF WORK FOR RFP 2020-86
SHUTTLE OPERATION SERVICES**

DEFINITIONS

ODOT	Oregon Department of Transportation
Project	Clackamas County Shuttle Operation Services for Last Mile Shuttle Operations
LMS	Last Mile Shuttles
SOW	Statement of Work
County	Clackamas County

PROJECT DESCRIPTION AND OVERVIEW OF SERVICES: Clackamas County Social Services currently provides a public transit service, known as the Mt Hood Express (MHX), seven days a week for both commuter routes and point deviated fixed routes through a contractor out of the City of Sandy. The Oregon City Last Mile Shuttle and Clackamas Industrial Shuttle are new services being offered as early May of 2021. These shuttle services are intended to service a variety of needs for passengers in the Oregon City and Clackamas Industrial areas.

The County will operate the Oregon City Last Mile shuttle which is a deviated fixed route service for a total of 10 revenue hours per a day. The selected vendor will assist the County in the development of a final schedule and route map.

The County will operate the Clackamas Industrial shuttle which is a deviated fixed route service for a total of 10 revenue hours per a day and/or Commuter Hours. The selected vendor will assist the County in the development of a final schedule and route map.

Service Transition

The Contractor will facilitate an efficient transition of service, which will entail working cooperatively with the County at the beginning of the contract period and, similarly, with County and the incoming selected service provider, if not Contractor, at the end of the contract period. A transition schedule will be established detailing a list of critical tasks, deadline for their completion and person(s) responsible for each.

Contractor Service Period

Contractor will begin providing the services under this Contract **July 1, 2021**. The Contractor will ensure that at all times during the term of this Contract vehicle operators and other personnel needed are employed and fully trained (including full understanding of the services to be provided). Full personnel files must be available upon request (training, drug and alcohol testing, Medical Cards, Oregon Drivers Licenses, etc.)

Hourly Service Rate

Compensation for operations will be on a revenue hour basis. Contractor will be compensated on a monthly basis following submission of invoice to the County with accompanying documentation, including information required for federal and state reporting.

Clackamas County reserves the right to change the number of hours and routes proposed for the deviated fixed route services. If changes result in more than 15%, Contractor will have the option of requesting a renegotiation of revenue hour rate.

Managerial/Supervisory Capacity

The Contractor will provide a Stations Manager, Disptacher(s), Maintenance Manager, Safety Manager, and Drivers or equivalent position under their hiring structure. The Station Manager will be on-call during all hours of operations. The Station Manager is responsible for the supervision of drivers and other operations personnel, daily work schedules, billing, reporting, accident and incident response, invoicing and other duties as assigned.

Contractor will provide a maintenance management through the use of a Fleet Maintenance Manager or equivalent position under their hiring structure.

Scheduling and Dispatch Staffing

In-office dispatch services shall be maintained during all hours of operation. An automated answering system must be used during non-business hours to provide general information and accept deviations in compliance with ADA requirements.

The Contractor will provide trip reservation scheduling at a minimum between 8:00 am and 5:00 pm weekdays and during service hours on weekends for the point deviated fixed route service.

Staff Hiring, Training and Evaluation

The Contractor will be responsible for hiring dispatchers, drivers and staff, completing an initial orientation and on-going training, and overall supervision. The Contractor shall conduct both a criminal and a driver history background check before hiring drivers. Contractor will provide County with a monthly list of all hiring's and trainings.

The Contractor will ensure compliance with Federal Transit Administration (FTA) regulations as described in 49 CFR Part 655 (as amended), Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations and 49 CFR Part 40, Conducting workplace drug and alcohol testing.

The Contractor will ensure that all drivers operating vehicles requiring a Driver's License in service for the County will possess a current Oregon class C- Driver's License.

The Contractor will provide written policies for safe operating procedures in all conditions including inclement weather, accidents and emergencies. The County will provide policies for customer service, ADA service, non-discrimination, media notification during inclement weather, age restrictions for unaccompanied minors, carry-on items, no-shows, suspension of services, and other policies as developed.

The Contractor will provide dispatch and driver training in at least the following areas:

- Defensive driving including emergency situations
- Passenger Safety
- Blood Borne Pathogens
- Safety Equipment
- Cellular Phones and two-way radio equipment
- Accident procedures
- Customer service
- Passenger behavior problems and security training
- Passenger sensitivity and customer service
- Americans with Disabilities Act (ADA)
- Wheelchair Passenger Securement
- FTA Drug/Alcohol rules & regulations
- Vehicle Orientation for Vehicle Type

The Contractor will provide an outline of its training curriculums with the amount of time committed to each of the training topics with its proposal. The County reserves the right to request additional training in any area it deems necessary.

The Contractor shall conduct, at a minimum, yearly evaluations that will include updated criminal and driver history checks and share annual report with County. The Contractor will consult with the County in developing evaluations regarding any input the County may have received from customers.

The Contractor will ensure that all drivers meet the following minimum criteria to participate in this program:

1. No more than two (2) moving violations in any one-year period. No more than three (3) moving violations in any three (3) year period during the service contract or in the five (5) years prior to application of this program (personal and commercial records inclusive).
2. If license has ever been suspended, applicant must have five (5) full subsequent years with no violations.
3. If license has ever been revoked, must have ten (10) subsequent years with no violations.
4. Under no condition, will an applicant be accepted as a driver for this program if (1) he/she has been convicted of a felony, (2) and/or has been convicted of a drug or alcohol offense including DUII diversion.
5. Contractor will require drivers to inform his/her supervisor of any conviction for a moving traffic violation immediately after such conviction. Failure to provide proper disclosure may be grounds for suspension or dismissal.
6. The Contractor will provide uniforms for all field personnel, as approved by the County. These may include both summer and winter uniforms.
7. The County reserves the right to require the removal of any driver, dispatcher or supervisor it deems is not an asset to the service.

Provide uniforms for all field personnel, as approved by the County. These may include both summer and winter uniforms.

The County reserves the right to require the removal of any driver.

Employee Wages, Salaries and Benefits

The Contractor shall provide wages and salaries commensurate with the responsibilities of the positions offered and in concert with current market labor rates in order to ensure a qualified available work force. The detailed summary should include wages and benefits proposed for the following positions:

- Station Manager Salary Range
- Maintenance Manager Salary Range
- Road Supervisor Salary Range
- Safety Manager Salary Range
- Driver Salary Range
- Differentials for non-traditional hours if applicable
- Dispatch, Schedulers and Control Room Staff
- Bus Wash Staff

Training wages can be reduced by up to \$1.00 per hour during a probation period not to exceed six (6) months.

The Contractor shall not establish work schedules to avoid paying full-time benefits and shall maintain at least 2/3 of staffing as full-time positions.

The Contractor will obtain permission from the County for the use of any sub-contractor used in conjunction with this Contract.

The Contractor will provide the County a monthly wages and benefits statement for verification purposes.

Vehicle Maintenance

Contractor shall assess mechanical condition of vehicle, schedule maintenance services and transport vehicles to the appropriate service and/or repair locations. Contractor shall maintain a vehicle repair and maintenance schedule that provides for excellent safety and maintenance and in compliance with all state and federal law and with vehicle manufacturer's recommendations for service.

The Contractor will bill \$40.00 flat fee for transporting the vehicles to their maintenance facility in Portland. The Contractor will perform all required maintenance and provide the county with a detailed invoice of the maintenance activities performed. County is responsible for repair and maintenance expenses based on actual expenses incurred and the submission original invoices. Repairs in excess of \$1,500 in value require written permission from the County. The Contractor will provide a monthly vehicle maintenance log for all services on each vehicle to the County.

All physical damage should be reported to the County within 24 hours of occurrence. Barring normal wear and tear, vehicles shall be returned in the same condition they were received by contractor.

Contractor is responsible for all vehicle repair costs arising from or related to damage caused by Contractor, subcontractors, agents, or employees.

The Contractor will be responsible for daily cleaning of the inside, regular cleaning of the outside of vehicles, any State mandated COVID cleaning, and any additional cleanings as needed due to requirements set forth by the State as part of the maintenance program. All service records will be kept on all vehicles and will be made available at the end of each month. Contractor shall assist with all warranty claims and Safety Bulletin Certificates of Compliance.

The Contractor will ensure that daily pre-trip and post-trip vehicle inspections are completed on a form approved by the County. The Contractor will promptly report any problems to the County and will not put any vehicle on the road unless it meets agreed safety standards.

Fuel cards shall be provided by County and may only be used at Pacific Pride fueling station. Fuel cards will be used only for fuel used for the Last Mile Shuttle services for the County.

Safety

Contractor shall ensure the safety of riders by any and all means necessary, including, but not limited to: ensuring ability to communicate with vehicle at all times, driver training, retraining and monitoring; alcohol and drug training; mobility assistance training; vehicle maintenance; maintaining order in and around vehicles; providing safety and emergency procedures and training; etc. Contractor shall ensure all vehicles are equipped with emergency equipment. . This shall include at a minimum: fire extinguisher, first aid kit, blood borne pathogen kit, fluids kit and flashlight. All fire extinguishers will be serviced by Contractor as recommended by manufacturer and applicable federal or state regulation. County will be responsible for the cost of the required equipment.

Vehicle Storage and Operating Facilities

The County will provide vehicle storage and a driver breakroom facility in Oregon City for use by the Contractor. Consumables, such as supplies and furnishings are not provided by the County. Contractor is responsible for providing facilities for dispatch and other operations, as well as office supplies and materials for the set-up of office space. Contractor is also responsible for providing dispatch software for use by this program as outlined in their RFP response. Costs associated with any agreement the Contractor may have with other landlords or software companies are included in the revenue hour rate and not subject to direct reimbursement.

Insurance

The Contractor will procure and maintain, at Contractor's sole expense, at all times during the duration of this Contract, the following kinds and forms of insurance, which will include, but are not limited to, General Liability, Worker's Compensation Insurance, and Automobile Liability Insurance (including both owned and non-owned vehicles), and will include Clackamas County, its Elected Officials, Officers, Employees, Agents and Volunteers, as additional insureds on all policies.

Contractor shall further include the Oregon Department of Transportation and Tri County Metropolitan Transportation District as additional insureds on all policies.

Required insurance is detailed in **Appendix B** and includes, but is not limited to:

- Workers Compensation
- Commercial General Liability
- Automobile Liability

Accident and Incident Reporting

The Contractor will notify the County immediately of any vehicle collision.

The Contractor will notify proper law enforcement officers and the County of any vehicle accident, missing, vandalized or stolen vehicles or equipment incidents involving the vehicle and any operations that might result in a claim within twenty-four (24) hours of discovery. Incident reports will include date, time and employee narrative along with the name, address, and phone contact of all parties involved and must be completed within 24 hours. The Contractor will also work with law enforcement officers in any unlawful activity that occurs within the vehicle or as noted in other areas of operation.

Data Collection

The Contractor will collect information on numbers of riders including elderly and disabled ridership and other data as requested by the County. Contractor will maintain and provide daily ridership data for all services including demand-response logs showing name of rider, origin and destination location and times, distance traveled as well as scheduling and dispatch logs showing number of riders per trip.

Performance (On-Time)

The Contractor will provide a minimum of 95% of trips "on-time". A trip will be considered "on-time" if it falls within a window of + or - fifteen (15) minutes deviation from the scheduled pick-up and drop-off times. Contractor will monitor deviated fixed route service for "on-time" performance and assure buses do not leave posted stop points before the time posted on the published schedules.

Fare Collections

The Contractor **shall not collect fares** for either Last Mile Shuttle Services at this time

Record Maintenance, Access, and Retention

The Contractor shall make and retain proper and complete books of record and account and maintain all fiscal records related to the service provided on for the County in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audit of municipal corporations. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Contractor shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Contractor as part of the Project, and any transportation services rendered by Recipient.

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

Other Operating Provisions

The County and Contractor will collect complaints, compliments and other comments about the service; respond promptly to all complaints (within 24 hours) and establish policies that complement and comply with the County's processes and procedures. The County and Contractor, in the spirit of cooperation, will share this information on a regular basis.

Contractor staff, including the office personnel, will on interact with the public on a consistent basis. Contractor staff will present in a professional manner in accordance to Clackamas County policies in both professionalism and attire.

Planning, Administration, Grant Writing and Marketing

The County will conduct overall program administration, grant application and preparation of grant compliance reports, planning, including route scheduling, design and marketing, developing travel guides and schedules for the public, and service quality monitoring on behalf of LMS services.

The Contractor shall supply on request, any necessary information to complete grant requests and reporting requirements for County services.

MISCELLANEOUS PROVISIONS:

Rider Confidentiality

Any and all information regarding any individual served by the County is strictly confidential. All Contractor staff are expected to comply with the most current local, state and federal law regarding confidentiality. Information in any form, including in aggregate, shall not be released to any party without the authorization of the individual and/or County.

Contractor's Waiver of Competition

Contractor understands that the award of contract and subsequent rendition of the service called for by these documents shall in no manner be construed so as to place Contractor in a position to be entitled to the benefits afforded to County employees or private transit operations under Section 3(e) of the Federal Transit Administration Act of 1964 (49 U.S.C., Section 1602(e) or any other comparable provision of federal or state law (or under any regulations promulgated thereunder), as they now exist or hereinafter may be amended. Contractor hereby waives any right it otherwise might have to assert any claim or claims under said provisions of law or that may be based upon principles of unfair competition.

Permits to Operate

At its sole cost and expense, Contractor shall obtain any and all permits, licenses, certificates, insurance, or entitlement to operate as are now or hereafter required by any agency, specifically including the Oregon Department of Transportation, and local building, planning and business license departments, to enable Contractor to perform this Contract, and shall provide copies of all such entitlement to County when received by Contractor. Contractor is liable for any and all taxes due as a result of this Contract.

Subcontractors

The Contractor shall obtain permission from the County for the use of any subcontractor that will be used in conjunction with the Contract.

The Contract shall not be sublet except with written consent of the County. No such consent shall be construed as making the County a party to such subcontract, nor subjecting the County to liability of any kind of to any subcontractor. No subcontract shall, under any circumstances, relieve Contractor of its liability and obligation under the Contract, and all transactions with the County must be through Contractor.

There shall be no assignment/transfer of interest or delegation of Contractor's rights, duties or responsibilities under the Contract without prior written approval of the County.

No custom material produced in whole or in part under the Contract shall be subject to copyright or patent in the United States or in any country. County and the FTA shall have the authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom materials prepared under the Contract.

Funding

This Contract may be funded, in whole or in part, by grant funds provided by the Federal Transit Administration (FTA). This Contract shall be governed by applicable federal laws and regulations relating to third-party contracts. Applicable federal regulations are outlined in **Appendix C** and are hereby incorporated by this reference herein. All terms required under applicable law, regardless of whether specified herein, are hereby incorporated by this reference herein.

SERVICE DESCRIPTION:

Oregon City Last Mile Shuttle

The County will operate the Oregon City Last Mile shuttle service, which is a deviated fixed route service for a total of 10 revenue hours per a day. The Contractor will assist the County in the development of a final schedule and route map.

- Provide up to, but not limited to, a minimum of 10 hours per a day of weekday deviated fixed route transit service.
- Provide up to, but not limited to, a minimum of 0 hours per a day of weekend deviated fixed route transit service. This is subject to change in year 2, where 10 hours of weekend deviated fixed route transit service may be added.

During County fiscal year July 1, 2021 – June 30, 2022, the Oregon City Last Mile service will have 5 weekdays of operation and 0 weekend days of operation. 2,600 annual vehicle revenue hours on the Oregon City Last Mile shuttle.

During County fiscal year July 1, 2022 – June 30, 2023, the Oregon City Last Mile service may increase to include 1 weekend day of operation.

Clackamas Industrial Last Mile Shuttle

The County will operate the Clackamas Industrial shuttle which is a deviated fixed route service for a total of 10 revenue hours per a day. The Contractor will assist the County in the development of a final schedule and route map.

The Contractor will be required to:

- Provide up to, but not limited to, a minimum of 10 hours per a day of weekday and/or commuter hour deviated fixed route transit service.
- Provide up to, but not limited to, a minimum of 0 hours per a day of weekend deviated fixed route transit service. This is subject to change if commuter hour service is selected. The Contractor may need to provide service 7 days a week at abbreviated hours for commuter service.
- Provide dispatcher and/or supervisory support during all service hours.

During County fiscal year July 1, 2021 – June 30, 2022, the Clackamas Industrial Last Mile service will have 5-7 weekdays of operation and 0-2 weekend days of operation depending on final schedule decisions; hours may be limited to commuter hours only. 2,600 annual vehicle revenue hours on the Clackamas Industrial shuttle.

During County fiscal year July 1, 2022 – June 30, 2023, the Clackamas Industrial Last Mile service may increase to include additional hours of operation.

Service Hours

The Contractor shall operate the Oregon City Last Mile Shuttle service based on the service outlined above., Holidays are as follows: New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day and Christmas Day.

The Contractor shall operate the Clackamas Industrial Last Mile Shuttle service based on the service outlined above. Holidays are as follows: New Year's Day, Memorial Day, Labor Day, Independence Day, Thanksgiving Day and Christmas Day.

Additional service may be considered in the future and will be negotiated with Contractor on a case-by-case basis.

Bus Equipment, Fuel and Maintenance

County shall provide at least two ADA-compliant vehicles for the Oregon City LMS Service and at least two ADA compliant vehicles for the Clackamas Industrial LMS Service and pay for all related fuel and routine maintenance and repair expenses. A current list of vehicles is set forth in **Appendix A**.

Back-up Vehicle

The County will be responsible for providing a comparable back-up vehicle if the County-provided vehicles are out of service.

APPENDICES INCLUDE:

Appendix A – County Fleet Vehicles

Appendix B – Contractor Insurance Requirements

Appendix C – Federal Transit Administration Requirements

APPENDIX A

Clackamas County Vehicle List

LAST MILE SHUTTLE VEHICLES							
County Unit #	License	VIN	Unit #	Make	Model	Year	Service date
		1FDFE4FS7KDC69082	9082	Glaval	Universal 22	2020	
		1FDFE4FS0KDC69067	9067	Glaval	Universal 22	2020	
		1FDFE4FS4KDC69027	9072	Glaval	Universal 22	2020	
		1FDFE4FS5KDC69100	9100	Glaval	Universal 22	2020	

APPENDIX B

CONTRACTOR INSURANCE REQUIREMENTS

The Contractor will, at Contractor's sole expense, at all times during the duration of this Contract, maintain the following kinds and forms of insurance, which will include, but are not limited to General Liability, Worker's Compensation Insurance, and Automobile Liability Insurance (including both owned and non-owned vehicle Automobile Liability Insurance), and will include Clackamas County, and its elected officials, officers, employees, agents and volunteers, as additional insureds on all required policies.

GENERAL

Contractor shall obtain and provide, for Contractor's performance under this Contract i) 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 performance of this Contract and ii) maintain the insurance in full force throughout the duration of this Contract. 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 Clackamas County. Contractor shall not commence work under this Contract, and shall not authorize work to begin until the insurance is in full force. Thereafter, Contractor shall monitor continued compliance with the insurance requirements on an annual or more frequent basis.

Contractor shall comply with any requirements of Clackamas County with respect to these insurance requirements, including but not limited to the Clackamas County issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

WORKERS COMPENSATION. Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.

COMMERCIAL GENERAL LIABILITY. Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to Clackamas County. 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 Clackamas County:

Bodily Injury, Death and Property Damage:

\$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). Insurance policy shall include Sexual Abuse/Molestation coverage or be provided by a separate policy.

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

Bodily Injury, Death and Property Damage:

\$5,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED

The Commercial General Liability Insurance and Automobile Liability insurance must include Clackamas County, and its respective officers, employees and agents, as additional insureds but only with respect to the Contractor's activities to be performed under the Contract and, with respect to subcontractors, activities to be performed under their sub agreements. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"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 this Contract for the Contractor, and the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the Contractor's completion and Clackamas County's acceptance of all services required under this Contract, and the subcontractors completion and Contractors acceptance of all services required under the sub agreement.

NOTICE OF CANCELLATION OR CHANGE

The Contractor or its insurer must provide 30 days' written notice to Clackamas County before cancellation of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE

Contractor shall submit to Clackamas County a certificate(s) of insurance for all required insurance before the commencement of performance of services. The certificate(s) or an attached endorsement must specify: all entities and individuals who are endorsed on the policy as Additional Insured

APPENDIX C

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

1. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 622

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Flow down Requirements: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

Energy Conservation - The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

2. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down Requirements The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to North County Transit District (NCTD).

3. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36(i)
49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts", Item 6 of this Section. Flow down Requirements FTA does not require the inclusion of these requirements in subcontracts.

Access to Records - The following access to records requirements apply to this Contract:

- (1) The Contractor agrees to provide NCTD, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Where NCTD or a sub-grantee of NCTD in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to NCTD, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (3) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (4) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NCTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
- (5) FTA does not require the inclusion of these requirements in subcontracts.
- (6) Requirements for Access to Records and Reports by Types of Contract Sources of Authority: 1 18 CFR 18.36 (i)

4. FEDERAL CHANGES

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Flow down Requirements: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NCTD and FTA , as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. RECYCLED PRODUCTS

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during

the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

Flow down Requirements: These requirements flow down to all contractor and sub-contractor tiers.

Recovered Materials - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

6. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

29 CFR Part 5 40 U.S.C. 3701 et seq. 40 U.S.C. 3702

Applicability to Contracts: The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work" with a value greater than \$100,000. These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12)

Flow down Requirements: Applies to third party contractors and sub-contractors.

(1) Overtime requirements - No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - NCTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime

7. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts: Applicable to all contracts.

Flow down Requirements: This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

- (1) NCTD and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to NCTD, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

8. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.
49 CFR Part 31
18 U.S.C. 1001
49 U.S.C. 5307**

Applicability to Contracts: These requirements are applicable to all contracts.

Flow down Requirements: These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements. Program Fraud and False or Fraudulent Statements or Related Acts

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor who will be subject to the provisions.

9. TERMINATION

**49 CFR Part 18 FTA Circular 4220.1F
See Article II, Paragraph 19 of the Contract document.**

10. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

49 CFR 18
2 CFR 1200
2 CFR 180

Executive Orders 12549 and 12689
31 U.S.C. 6101

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, sub-contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327). These provisions apply to all NCTD contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System (EPLS), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow down Requirements: These requirements flow down to contractors and sub-contractors at all levels.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by NCTD. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to remedies available to NCTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions.

11. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts: When NCTD maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow down Requirements: The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

12. CIVIL RIGHTS REQUIREMENTS

**29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

(1) The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:

- i. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332, California Civil Code § 51, California Government Code § 11135
- ii. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112, California Government Code § 12900 - 12996
- iii. 49 U.S.C. § 5325 (k).
- iv. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.

(2) The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.

(3) The following requirements apply to a contract awarded as a result of this solicitation:

- i. Nondiscrimination - In accordance with U.S. Department of Transportation (DOT), Federal, and State of California regulations 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102,

42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, the Unruh Civil Rights Act, California Civil Code § 51, and California Government Code § 11135, the Contractor agrees that it will comply with the identified Federal and State of California laws and regulations, pertaining to NCTD programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements the FTA may issue, and any other applicable Federal and State of California statutes and/or regulations that may be signed into law or promulgated.

ii. Equal Employment Opportunity - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:

a. Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, California Government Code Sections 12900 - 12996 and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect Bidder agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. (4) The Contractor agrees to include these requirements in each

subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

13. ADA ACCESS REQUIREMENTS

49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

Applicability to Contracts: The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

14. PATENT AND RIGHTS IN DATA

37 CFR Part 401 49 CFR Parts 18 and 19

Applicability to Contracts: Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow down Requirements: The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, NCTD or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may NCTD or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal

Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by NCTD or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, NCTD and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for NCTD or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, NCTD and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by NCTD or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither NCTD nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by NCTD or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that NCTD or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal

Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contract and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, NCTD and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), NCTD and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

15. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Section 1101(b) of MAP-21 (23 U.S.C. § 101 note)

(1) NCTD encourages DBE participation in this solicitation. In order to qualify as a DBE, a Contractor, or a Contractor's sub-contractor, must be certified as a DBE under 49 CFR Part 26. As a recipient of Federal funds, NCTD must comply, and insure that its Contractor(s) comply with 49 CFR Part 26, Section 1101(b) of MAP-21 (23 U.S.C. § 101 note).

(2) DBE Requirements/DBE Obligation:

- i.** The Contract to be awarded may be funded in part by the U.S. Department of Transportation (DOT) FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- ii.** The Contract to be awarded may be funded in part by the U.S. DOT FTA. As a condition of financial assistance agreements between NCTD and the U.S. DOT, NCTD has established a DBE Program and overall triennial DBE goal in accordance with Title 49 CFR, Part 26.
- iii.** Pursuant to Race-Neutral DBE policy directive issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation* and the FTA's Guidance (Docket No. FTA-2006-24063; dated

March 23, 2006), NCTD will strictly utilize race-neutral measures to meet its overall DBE goals and objectives. Contractors are encouraged to afford small businesses, including DBEs, an equitable opportunity to compete for and perform on a contract resulting from this solicitation. iv. The Contractor, and any of its sub-contractors, are to ensure that DBE as defined in 49 CFR Part 26 have equal opportunities to participate in the performance of NCTD contracts. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure

that DBEs have the equal opportunities to compete for and are awarded contracts. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this U.S. DOT-assisted contract. Each subcontract the Contractor signs with a sub-contractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

v. MAP-21 §1101(b), 23 U.S.C. Section 101 note, extends the Federal statutory requirement that FTA make available at least 10 percent (10%) of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantaged people. NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding assists FTA in meeting this national goal.

To receive FTA assistance, NCTD and sub-recipients (Contractor and its sub-contractors) of FTA-funding must comply with applicable requirements of DOT regulations 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". As NCTD is required to have a DBE program, the third-party contracts that NCTD has included in its DBE program determine whether the NCTD meets the DBE threshold for goal setting, and the goal if the threshold is met.

(3) DBE Financial Institutions

- i. The Contractor is to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage sub-contractors to make use of these institutions also.
- ii. A list of Minority Owned Banks is on the Federal Reserve website at <http://federalreserve.gov/releases/mob/current/default.htm>. The Federal Reserve website is updated periodically.
- iii. The Contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

(4) DBE Reporting and Certification

- i. Monthly reporting requires the submittal of a "Monthly Sub-Contractor Payment Report", which is used by NCTD to verify payments to DBE and non-DBE sub-contractors. When completing this form, the Contractor must designate DBE sub-contractors by placing an asterisk in front of their name. As Federal law requires that NCTD have proof of payment to a DBE sub-contractor, the sub-contractor must initial the form and verify payment received. Failure to submit a properly executed form will result in delayed payment. Failure to submit these reports in a timely manner may result in a penalty of \$10 per day, per report.
- ii. In order for the Contractor to submit a properly executed "Monthly Sub-Contractor Payment Report," the Contractor must verify that Sub-contractors DBE certification is current at time of payment.
- iii. Certified Contractors can be found at the State of California web site: http://www.dot.ca.gov/hq/bep/find_certified.htm

(5) DBE Contract Assurance (49 CFR 26.13)

i. NCTD does not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. NCTD takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts. NCTD's DBE Program as required by 49 CFR Part 26 and as approved by U.S. DOT will be incorporated by reference into the contract resulting from this solicitation.

ii. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the Contractor from future bidding as non-responsible.

(6) DBE Prompt Payment (49 CFR 26.29)

i. Not later than ten (10) days after receipt of each progress payment from NCTD, the successful Bidder shall pay to any sub-Contractor performing any work, the respective amounts allowed to the successful Bidder for work performed by the sub-Contractor, to the extent of each sub-Contractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the successful Bidder receipt of released retention from NCTD upon completion of the project as defined in California Public Contract Code section 7107 the successful Bidder shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by NCTD, the successful Bidder shall pay each of its sub-Contractors from whom retention has been withheld, each sub-Contractors share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to both DBE and non-DBE sub-Contractors.

ii. Failure to comply with these provisions or delay in payment without prior written approval from NCTD will constitute noncompliance, which will result in appropriate administrative sanctions, including, but not limited to a penalty of 2% of the amount due per month for every month that payment is not made.

(7) DBE Breach of Contract

i. Failure to carry out the requirements of these provisions constitutes a breach of contract and may result in termination of the contract by NCTD or imposition of other appropriate sanctions pursuant to 49 CFR Part 26.13 (b).

(8) Civil Rights Policy Statements

i. NCTD's DBE Policy Statement for its FTA approved DBE program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-25.pdf>

ii. NCTD's Discrimination Complaint Procedures Policy Statement for its Title VI/Unruh program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-26.pdf>

iii. NCTD's EEO Policy Statement for its EEO program is located at the following website: <http://www.gonctd.com/wp-content/uploads/2013/05/Policy-27.pdf>

16. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NCTD requests which would cause NCTD to be in violation of the FTA terms and conditions.

**EXHIBIT B
FEE SCHEDULE**

CLACKAMAS COUNTY LAST MILE SHUTTLES COST ESTIMATE			
Service Description	Estimated Service Hours	Revenue Hour Rate: The hourly rate reflects all fixed and variable costs involved in providing service.	
		Year 1	Year 2
Oregon City Shuttle (deviated fixed route)	Year 1: 2600 Year 2: 2600	\$56.01	\$56.01
Clackamas Industrial Shuttle (deviated fixed route)	Year 1: 2600 Year 2: 2600	\$56.01	\$56.01
Total Operation Contract Cost (revenue hour rate * estimated hours of service)		\$291,252.00	\$291,252.00
Maintenance Reimbursement**		\$80,000.00	\$80,000.00
Future Expansion		\$100,000.00	\$100,000.00
Total Operations Contract		\$471,252.00	\$471,252.00

Total Years 1 & 2: \$942,504.00

***In the event maintenance expenses exceed the allotted budgetary estimate, the parties will negotiate in good faith to address the maintenance issues through a contract amendment or other mutually agreeable solution. Provided, however, that any increase in the Contract amount is subject to availability of funds, as determined by the County in its sole discretion.*

EXHIBIT C

**Clackamas County IGA with TriMet for HB 2017
Statewide Transportation Improvement Funds (STIF)**

EXHIBIT C

**TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
SUBRECIPIENT AGREEMENT [GP200809EV]
DISBURSEMENT OF STATE OF OREGON, PUBLIC TRANSIT SECTION
SPECIAL TRANSPORTATION IMPROVEMENT FUNDS**

PARTIES:

1. Tri-County Metropolitan Transportation District of Oregon (TriMet), a mass transit district organized under ORS Chapter 267. TriMet is acting as a Qualified Entity designated to distribute funds pursuant to ORS Chapter 184.751 *et seq* to authorized entities that provide Public Transportation Services from the State of Oregon Department of Transportation (ODOT), Public Transit Division, Special Transportation Improvement Fund (STIF) for the purposes set forth at ORS 184.758. Pursuant to Resolution No. 18-10-72, TriMet's Board of Directors authorized TriMet to disburse STIF Formula Funds received by TriMet to eligible Subrecipients in accordance with the STIF Plan.
2. Clackamas County (Subrecipient).

DEFINITIONS:

As used in this Agreement, which includes all Exhibits:

1. "Americans with Disabilities Act" ("ADA") means section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008.
2. "Capital Asset" means real property or tangible items purchased or leased with STIF moneys, including without limitation vehicles and structures, with a purchase price of \$5,000 or more and a useful life of at least one year.
3. "Commission" means the Oregon Transportation Commission ("OTC") established under ORS 184.612.
4. "Fiscal Year" means the annual period which begins on July 1 and ends on June 30.
5. "Low-Income Household" means a household the total income of which does not exceed 200% of the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) for the 48 Contiguous States and the District of Columbia.
6. "Project" means a public transportation improvement activity or group of activities that is (i) eligible for STIF moneys; (ii) included in a STIF Plan adopted by the Commission; and (iii) funded by this Agreement.
7. "Project Manager(s)" means the individuals identified in Section 12 of this Agreement who are authorized by TriMet and Subrecipient respectively to send and receive communications regarding this Agreement.
8. "Public Transportation Services" means any form of passenger transportation by car, bus, or other conveyance, either publicly or privately owned, which provides service to the general public (not including charter, sightseeing, or exclusive school bus service) on a regular and continuing basis. Such transportation may be for purposes such as health care, shopping, education, employment, public services, personal business, or recreation.

9. "Public Transportation Service Provider" means a Qualified Entity or a city, county, Special District, Intergovernmental Entity or any other political subdivision or municipal or Public Corporation that provides Public Transportation Services.
10. "Qualified Entity" means, a county in which no part of a Mass Transit District or Transportation District exists, a Mass Transit District, a Transportation District or an Indian Tribe.
11. "Recipient" means a Qualified Entity or Public Transportation Service Provider that has a STIF Plan approved by the Commission or enters into an agreement directly with ODOT to receive STIF Formula Funds.
12. "Representation Letter" means a letter prepared by a Subrecipient's external auditors and sign by Subrecipient's senior management that attests to the accuracy of the statements that the Subrecipient has submitted to the auditors for their analysis.
13. "Satisfactory Continuing Control" means the legal assurance that a Capital Asset will remain available to be used for its originally authorized purpose throughout its useful life or until disposition.
14. "STIF" or "Statewide Transportation Improvement Fund" means the fund established under ORS 184.751.
15. "STIF Formula Fund" means up to 90 percent of the Statewide Transportation Improvement funds to be disbursed to Qualified Entities conditioned upon the Commission's approval of a STIF Plan, pursuant to ORS 184.758(1)(a).
16. "STIF Formula Fund Cycle" means the time period between Fiscal Years 2019 through the end of Fiscal Year 2021 (June 30, 2021) that is programmed in the STIF Plan.
17. "STIF Plan" means a public transportation improvement plan that is approved by TriMet's Board of Directors and submitted to the Oregon Department of Transportation for review and approval by the Commission in order for TriMet to receive a share of the STIF Formula Fund.

RECITALS:

1. ORS 184.751 establishes the Statewide Transportation Improvement Fund, which appropriates funds to the Oregon Department of Transportation to finance investments and improvements in public transportation services.
2. The STIF Formula Fund is intended to improve Public Transportation Services for current and potential future Oregon transit users by distributing moneys to Qualified Entities. STIF Formula Funds are not intended to supplant local funding sources to maintain existing services.
3. The Commission has approved TriMet's multi-year Plan for use of STIF Formula Funds through the end of Fiscal Year 2021. TriMet is a Recipient of STIF Formula Funds as it is authorized to receive STIF Formula Funds directly from the Oregon Department of Transportation. TriMet's STIF Plan consists of numerous Projects to provide Public Transportation Services in TriMet's area of responsibility based on anticipated STIF Formula Funds.
4. Subrecipient is authorized to receive STIF Formula Funds and provide Public Transportation Services in and around Clackamas County, Oregon. Subrecipient provides Public Transportation Services in TriMet's Area of Responsibility as defined by OAR 732-040-0005(5).
5. TriMet's STIF Plan anticipates sufficient future STIF Formula Funds for Subrecipient for a Project or Projects that provide Public Transportation Services as specified in this Agreement.

6. Pursuant to ORS Chapter 184 and OAR Chapter 732, Divisions 40 and 42, TriMet and Subrecipient enter into this Agreement for the sole purpose of disbursing the approved STIF Formula Funds to Subrecipient in order for Subrecipient to complete one or more tasks specified in the STIF Plan. **Funds shall be used solely for the Project(s) and shall not be used for any other purpose.**

AGREEMENTS:

1. General

- 1.1. Subrecipient agrees to comply with and use the STIF Formula Funds in accordance with the terms of this Agreement including the terms and conditions of ORS 184.751 through 184.766, the provisions of OAR Chapter 732 Divisions 40 and 42, as may be amended, TriMet's Approved FY2019-2021 STIF Plan, and any ODOT guidance documents pertaining to the Statewide Transportation Improvement Funds program, all of which are incorporated into and made part of this Agreement. Specific contractual requirements applicable to Subrecipient under this Agreement are set forth in Exhibits A, B, C, D, E, F, and G, which are incorporated into and made part of this Agreement. Any conflict among the terms of this Agreement shall be resolved in accordance with the following order of precedence: this Agreement form: Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, and Exhibit G. This Agreement is subject to any agreements made between ODOT and TriMet regarding disbursement of the STIF Formula Funds, and shall be amended to incorporate those changes.
- 1.2. Subrecipient affirms that it has all the necessary policies and procedures in place to ensure compliance with OAR 732 Divisions 40 and 42, and to achieve the goals and outcomes described in the Project, including but not limited to program and project management; financial management; operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.
- 1.3. Subrecipient shall not be relieved of any responsibility for performance of Subrecipient's duties under this Agreement, regardless of any subcontract entered into. Subrecipient shall require any subcontractor performing services under this Agreement to enter into a written agreement with Subrecipient before the commencement of services, which shall require the subcontractor to comply with ORS 184.751 through 184.766 and the provisions of OAR Chapter 732, Divisions 40 and 42, as may be amended, and the terms of this Agreement. Where provided in this Agreement, Subrecipient shall specifically include in all subcontracts a requirement that the subcontractor shall be bound as provided in this Agreement and exhibits thereto.
- 1.4. Subrecipient and TriMet agree that the percentages of STIF Formula Funds designated for Subrecipient in Exhibit E represents, to the extent possible and using the best available data, an allocation method that is proportionate to the amount of employee payroll tax revenue generated within the geographic territory of the Subrecipient.
 - 1.4.1. If Subrecipient receives STIF Formula Funds generated within TriMet's geographic district, Subrecipient agrees that the STIF Formula Funds in Exhibit E represent the allocation to Subrecipient approved by the Oregon Transportation Commission.
- 1.5. If the total amount of STIF Formula Funds transferred to Subrecipient pursuant to Section 1.4 exceeds the total amount in Exhibit D, the Subrecipient shall retain all excess funds in a restricted account for a future STIF Plan or for disbursement as otherwise approved by the Oregon Transportation Commission.

- 1.6. If the total amount of STIF Formula Funds received by TriMet from ODOT exceeds the total amount budgeted by Subrecipient for any fiscal year in Exhibit D, then TriMet shall retain all excess funds in a restricted account and will disburse the funds plus interest to Subrecipient for STIF Plan activities to be conducted in the following fiscal year until the maximum amount for the STIF Plan has been reached. A Subrecipient cannot spend more than the amount budgeted for STIF Plan Period, whether from STIF Formula funds or interest earned on those funds.
 - 1.6.1. Any STIF Formula Funds, including interest, accrued at the end of the STIF Plan period in excess of the amount budgeted by Subrecipient for the STIF Plan period in Exhibit D will be retained by TriMet and disbursed in accordance to the subsequent STIF Plan approved by the Oregon Transportation Commission.
- 1.7. If the STIF Formula Funds transferred to Subrecipient pursuant to Section 1.4 are not sufficient to meet the funding schedule in Exhibit D, TriMet will utilize the Subrecipient's percentage of STIF Formula Funds identified in Exhibit E relative to the total STIF Formula Funds received by TriMet, unless the Parties agree otherwise.
- 1.8. TriMet agrees to distribute STIF Formula Funds due to Subrecipient in accordance with the terms of this Agreement, ORS 184.751 *et seq.*, and OAR Chapter 732 Divisions 40 and 42.

2. Audit and Compliance Review

- 2.1. Subrecipient shall conduct an annual financial audit of the STIF Formula Funds received by the Subrecipient pursuant to this Agreement. All financial audit reports shall be submitted to TriMet no later than 30 days after the receipt of the auditor's final report(s).
- 2.2. All audits prepared pursuant to Section 2.1 shall include the agreed-upon procedures (AUP) as set forth in Exhibit F. Those procedures, and related costs, will be included with the Subrecipient's annual financial statement audit as referenced in Section 2.1.
- 2.3. Subrecipient shall be subject to periodic on-site compliance reviews by TriMet. The purpose of the compliance site review is to ensure that Subrecipient has appropriate, adequate internal controls and management procedures to meet the terms and conditions of agreements governing the disbursement of STIF Formula Funds. Compliance reviews may include but not be limited to the following, as applicable: program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.
- 2.4. An on-site compliance review may not be required upon satisfactory completion by Subrecipient of the AUP as required in Exhibit F and the following:
 - 2.4.1 When conducting a financial statement audit in accordance with Generally Accepted Auditing Standards (GAAS) and Generally Accepted Government Auditing Standards (GAGAS or the Yellow Book), written representations are provided in Subrecipient's Representation Letter regarding STIF Formula Funds to complement the auditing procedures of the independent auditor. TriMet requires the following language to be included in the Representation Letter to account for STIF Formula Funds regardless of materiality:

“We are responsible for complying, and have complied with, the requirements pursuant to ORS Chapter 184 and OAR 732, Divisions 40 and 42 for the use of STIF Formula funds identified in the approved FY2019-21 STIF Plan. We have all appropriate, adequate internal controls and management procedures to meet the terms

and conditions of agreements governing the disbursement of STIF Formula Funds, including program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.”

- 2.4.2 No later than 30 days after receipt of the auditor’s financial report, Subrecipient will provide an electronic copy of the following documents to TriMet:
 - 2.4.2.1. Audited Financial Statements or Comprehensive Annual Financial Report (CAFR);
 - 2.4.2.2. Report of Independent Auditors on Compliance and on Internal Control Over Financial Reporting Based on an Audit of Financial Statements Performed in Accordance with Oregon Municipal Auditing Standards;
 - 2.4.2.3. Report of Independent Auditors on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards.
 - 2.4.2.4. Report of Independent Auditors on Compliance for the Major Federal Program, Report on Internal Control Over Compliance, and Report on the Schedule of Expenditures of Federal Awards Required by the Uniform Guidance;
 - 2.4.2.5. Management Representation Letter with the representation described in 2.4.1;
 - 2.4.2.6. Agreed Upon Procedures Report as required by ODOT and fully described in Appendix F.
 - 2.4.2.7. Written communications describing material weaknesses, significant deficiencies, or other matters, including written comments for opportunities for improvement;
 - 2.4.2.8. The results of any comprehensive review completed by the Federal Transit Administration or the Oregon Department of Transportation within 30 days of receipt, if applicable;
 - 2.4.2.9. The results of any STIF Formula Fund related reviews or audits within 30 days of receipt, if applicable.
- 2.5. If applicable, the asset inventory list as described in the Agreed Upon Procedures. If additional compliance requirements and/or findings are identified by the independent auditor resulting in a corrective action plan, then TriMet will undertake necessary steps to ensure compliance requirements have been met and/or corrective action plans are fully developed and implemented. TriMet will bill Subrecipient for any audit or compliance review services as provided in this Section 2 on a cost reimbursement basis.
- 2.6. TriMet may request additional information including, but not limited to, audits of specific projects or services. Subrecipient will adhere to financial management procedures in accordance with Oregon and other applicable laws and requirements, and specifically as provided by ORS 184.751 through 184.766 and OAR Chapter 732, Divisions 40 and 42 in addition to the requirements set forth in this Agreement.
- 2.7. Subrecipient shall permit TriMet, ODOT, the Secretary of State of the State of Oregon, or their authorized representatives, upon reasonable notice, access to all data and records relating to STIF Formula Funds received or disbursed and to inspect the STIF Plans and Projects financed with STIF Formula Funds including, but not limited to, the financial records, physical premises, and Capital Assets used to deliver public transportation services.

- 2.8. Subrecipient shall ensure that its agreements or contracts with subcontractors or vendors include provisions which permit TriMet, ODOT, the Secretary of State of Oregon, or their authorized representatives, access to data and records held by the Subrecipient or vendor as described in this Section.

3. Accounting Requirements

- 3.1. Subrecipient shall account for STIF Formula Funds separately. Any interest accrued must be added to the moneys and must be reported to TriMet at the end of the Fiscal Year in which it was earned.
- 3.2. Subrecipient shall document the expenditure of all STIF Formula Funds disbursed by TriMet under this Agreement. Subrecipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles (GAAP) and in sufficient detail to permit TriMet to verify how the STIF Formula Funds were expended. Subrecipient shall comply with applicable federal, state and local laws for accounting, billing and reporting requirements with STIF Formula Funds.

4. Reporting Requirements

- 4.1. In addition to any other reporting required by this Agreement or by law, Subrecipient shall submit the following electronic documentation to TriMet:
 - 4.1.1. The Subrecipient's adopted annual budget for the upcoming Fiscal Year must be submitted no later than 30 days after adoption. A subcontractor is not required to submit its organization's annual budget.
 - 4.1.2. The results of any relevant financial audits of the Subrecipient or any subcontractor, as required by a local, state or federal oversight agency for the purposes of statewide reporting including, but not limited to:
 - 4.1.2.1. Any other report concerning the financial and administrative activities of Subrecipient as required by law that affects the ability of Subrecipient or a subcontractor to perform the functions or programs funded by this Agreement.
- 4.2. Results of audits described in this Section 4.1.2 must be submitted to TriMet no later than 15 days after receipt of the final results. A copy of information submitted under this Section 4.1.2.1 must be sent to TriMet no later than 15 days after submittal to the requesting agency.
- 4.3. Subrecipient will provide TriMet with any report that documents the benefits and discrete measurable outcomes associated with each Project as outlined in Exhibit G, the ODOT STIF Formula Fund Reporting Requirements Overview.

5. Withholding of Funds

- 5.1. Subrecipient shall assure that funds allocated hereunder are used only for the purposes permitted, and assumes responsibility for breach of conditions of the STIF Formula Funding requirements hereunder by Subrecipient. Upon breach of this Agreement by Subrecipient TriMet may withhold future STIF Formula Fund payments to Subrecipient.
- 5.2. In addition to any other provisions of this Agreement TriMet may withhold payment of STIF Formula Funds, if:
 - 5.2.1. The Subrecipient or its subcontractor is not using STIF Formula Funds in accordance with the STIF Plan, this Agreement, or applicable laws or regulations;
 - 5.2.2. The Subrecipient or its subcontractor has not submitted reporting required by applicable law or this Agreement, subject to a reasonable cure period;

- 5.2.3. TriMet determines that there are any unresolved audit finding relating to the accounting for STIF Formula Funds as provided by Section 2 Audit and Compliance Review of this Agreement;
- 5.2.4. TriMet determines that there is any unresolved compliance review finding relating to the use of STIF moneys as provided by Section 2 Audit and Compliance Review of this Agreement;
- 5.2.5. If an audit or a review of Subrecipient under this Agreement determines that Subrecipient used STIF Formula Funds inconsistently with this Agreement, TriMet may withhold future STIF Formula Funds;
- 5.2.6. Federal or State laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;
- 5.2.7. The Commission has withdrawn, modified, or limited its approval of Subrecipient's program as described in this Agreement;
- 5.2.8. Subrecipient terminates this Agreement; or
- 5.2.9. TriMet fails to receive funding, appropriations, limitations or other expense authority outside the control of TriMet, sufficient to allow TriMet, in the exercise of its reasonable administrative discretion or to continue to make payments for performance of this Agreement.

6. Discrimination Prohibited/Compliance with Laws

- 6.1. Subrecipient certifies that no person shall, on the grounds of race, color, creed, religion, sex, age, national origin, or disability, be excluded from participation in, or be denied the benefits of, any activity for which Subrecipient receives STIF Formula Funds. Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, national origin, or disability.
- 6.2. Subrecipient shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 6.3. Subrecipient will include the terms of Sections 6.1-6.2 in any contract with a vendor or subcontractor for the use of STIF Formula Funds.

7. Indemnification

- 7.1. The parties agree that TriMet shall have no liability of any nature in connection with the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services. To the fullest extent permitted by law, Subrecipient agrees to fully indemnify, hold harmless and defend, TriMet, its directors, officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigation and defense thereof including reasonable attorney's fees, resulting from or arising, as between TriMet and Subrecipient, solely out of the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services by Subrecipient, its officers, directors, employees, agents, subcontractors and volunteers under this Agreement. If Subrecipient is a public body and the claim, suit, or action subject to indemnification under this section is limited by the Oregon Tort Claims Act (ORS 30.260 *et seq*), then Subrecipient's indemnification will not exceed an amount equal to the applicable tort claim limit for Subrecipient pursuant to the Oregon Tort Claims Act. Any claim, suit, or action not arising solely out of the Subrecipient's use of the STIF Formula Funds or Subrecipient's provision of transportation services shall be governed by Exhibit A(6), contribution.

7.2. In addition to any other remedies available to TriMet as provided for by law or under this Agreement, any Subrecipient receiving STIF Formula Funds, pursuant to this Agreement shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement. The provisions set forth in this Section and related provisions in Exhibit A shall survive termination or expiration of this Agreement.

8. Vehicle/ Operator Requirements

- 8.1. Subrecipient shall ensure that all drivers of equipment purchased with STIF Formula Funds have a valid Oregon driver's license and shall have passed a defensive driving course or bus driver's training course. Per ORS 820.200, drivers of public passenger-carrying vehicles must be at least 21 years of age. Drivers of equipment designed to carry 16 or more passengers, including the driver, shall have a valid Commercial Driver's License (CDL). Subrecipient shall otherwise ensure that operation of the vehicles is performed in accordance with all applicable laws and regulations.
- 8.2. Subrecipient shall require criminal, Department of Motor Vehicles and employment background checks as part of the eligibility requirements for all drivers as provided by Subrecipient's own policy or as provided for in a contract with a vendor or contractor.
- 8.3. Subrecipient will include the terms of Sections 8.1-8.2 in any contract with a vendor or subcontractor for the use of STIF Formula Funds.

9. Progress Reporting Requirements

- 9.1. Quarterly Reports: Subrecipient shall prepare a quarterly report for TriMet which details Project progress, outcomes achieved, and expenditures of STIF Formula Fund moneys by itself and any subcontractors. The quarterly report must be submitted no later than 30 days following the end of a quarter.
 - 9.1.1. The quarterly reporting periods for each STIF Plan year are:
 - 9.1.1.1. January through March
 - 9.1.1.2. April through June
 - 9.1.1.3. July through September
 - 9.1.1.4. October through December
- 9.2. Quarterly progress reports should be remitted via TriMet's established process for posting on its website that meets the requirements of Exhibit A and Exhibit D. Reports must be in a format acceptable to TriMet.
- 9.3. TriMet reserves the right to request additional information as may be necessary to comply with state reporting requirements.
- 9.4. STIF Plan Period Reconciliation: Within 30 days of the end of an approved STIF Plan period, TriMet shall reconcile disbursements made to Subrecipient against the Subrecipient's reported expenditures. If disbursements are found to exceed the expenditures, the amount may be carried forward by the Subrecipient into the next STIF Formula Fund Cycle provided that the Commission approves of the funding plan any funds carried forward.
- 9.5. Capital Asset Reports: If the Subrecipient has acquired, purchased or leased Capital Assets using STIF Formula Fund moneys, Subrecipient shall provide TriMet with a report of the Capital Asset inventory, described in Exhibit C Section 2, including an identification of any sale, transfer or other disposition of the Capital Asset as described in Exhibit C. Capital Asset Reports must be submitted to TriMet on a quarterly schedule in a manner specified by TriMet.

10. Funding

- 10.1. Upon execution of this Agreement, TriMet shall disburse to Subrecipient funds quarterly as outlined in the schedule set forth in Exhibits A, D, and E.
- 10.2. Subrecipient shall document eligible use of STIF Formula Funds through the reports submitted to TriMet's Project Manager in accordance with this Agreement and the Exhibits.
- 10.3. The parties acknowledge that the schedule for disbursement of funds in Exhibits D and E are based on anticipated future tax revenue collected by the State of Oregon. The estimated disbursements are not guaranteed. Actual funds received may not be sufficient to provide Subrecipient the full amount of STIF Formula Funds in any quarter as anticipated by this Agreement.

11. Term

This Agreement shall be in effect from July 1, 2019 through June 30, 2021, unless the Agreement is terminated earlier as provided in this Agreement.

12. Communications

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

TriMet:

For Reporting:

Erika Turney, Grants Administrator
TriMet
1800 SW 1st Ave., Suite 300
Portland, OR 97201
503.962.4832
turney@trimet.org

For STIF Program Questions:

Tom Mills, Service Development Manager
TriMet
1800 SW 1st Ave., Suite 300
Portland, OR 97201
503.962.4883
millst@trimet.org

Subrecipient:

For all communications:

Teresa Christopherson
Administrator
Clackamas County
2051 Kaen Rd., #135
Oregon City, OR 97145
503-650-5718
teresachr@co.clackamas.or.us

If one party finds a need to designate a new Project Manager, it shall immediately notify the other party in writing, electronic mail, or other dated documentation.

13. Assignment/Subcontracts

Except with regard to audit requirements, Subrecipient may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of TriMet. Any assignment, delegation or subcontract in violation of this paragraph shall be null and

void, and shall constitute grounds for immediate termination by TriMet. If the delegation to a specific entity has been made in the STIF Plan approved by ODOT, then TriMet consents to the delegation.

14. Mediation

Should any dispute arise between the parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this Agreement agree to participate in good faith in a non-binding mediation process. The 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. All costs of mediation shall be borne equally by the parties. Notwithstanding the foregoing, either party may seek equitable relief, including, but not limited to, injunctive relief and specific performance, at any time prior to, during, or following mediation.

15. Entire Agreement/Authority

15.1. This Agreement, which includes the attached Exhibits A-G constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by either party of that or any other provision.

15.2. If any term of this Agreement is determined by a court to be illegal or conflict with any law, the remaining terms 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.

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


15.4. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

TRIMET

By: Bernie Bottomly

Signature: _____

Date: _____


7/2/19

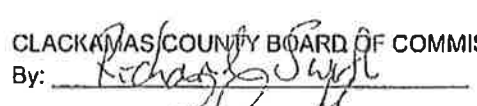
CLACKAMAS COUNTY BOARD OF COMMISSIONERS

By: _____

Name _____

Title _____

Date: _____


Name: Richard S. Swift
Title: H35 Dir.
Date: 7.2.19

Approved as to form

By: _____

Office of County Attorney

6/17/19

EXHIBIT A

SPECIFIC AGREEMENT PROVISIONS

Subrecipient shall comply with the provisions as set forth in this Exhibit. Where provided in Exhibit A, Subrecipient shall require each of its subrecipients or subcontractors to comply with the provisions as set forth in this Exhibit.

1. Disbursement and Recovery of STIF Formula Funds.

A. **Disbursement Generally.** TriMet shall promptly disburse STIF Formula Funds to Subrecipient after the Oregon Department of Transportation provides funding to TriMet in accordance with and subject to approval of the STIF Plan, the terms and conditions of this Agreement, and Subrecipient's compliance with this Agreement. As used in this Section, "promptly," means within 5 business days of TriMet's receipt of STIF Formula Funds from ODOT after July 1, 2019, absent a written notification from TriMet to Subrecipient explaining the reason(s) for any delay beyond 5 business days. Subject to the forgoing and based on the current and best available information, TriMet anticipates the following schedule for distribution of STIF Formula funds to Subrecipient:

- i. Provided this Agreement has been executed by Subrecipient at least 7 business days prior to July 1, 2019, and Subrecipient has provided TriMet with payment instructions required by TriMet by June 21, 2019, the first disbursement will take place within 5 business days of July 1, 2019. This disbursement is expected to reflect STIF Formula Funds from ODOT for the first two quarters of Fiscal Year 2019.
- ii. The second disbursement is anticipated for later in July 2019. The second disbursement is anticipated to reflect STIF Formula Funds from ODOT for the third quarter of Fiscal Year 2019.
- iii. After the two disbursement above that are anticipated to occur in July 2019, TriMet will make subsequent disbursements quarterly following receipt from ODOT. ODOT expects to disburse funds to TriMet on January 15, April 15, July 15, and October 15 each year during the STIF Plan Period.
- iv. Following the first to disbursements in this Section 1(A)(i)-(ii), the next disbursement is anticipated to occur after TriMet receives funding on October 15, 2019 and then every quarter thereafter during the STIF Plan Period.

B. **STIF Plan Budget Revisions.** In the event that Subrecipient determines that funds need to be shifted between tasks within that Subrecipient's Project or between that Subrecipient's Projects as allowed under ODOT published guidance, Subrecipient's Project Manager will submit a transfer request to TriMet's Project Manager. TriMet will promptly request approval from ODOT on Subrecipient's behalf.

2. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to TriMet as follows:

- A. **Organization and Authority.** Subrecipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the STIF Formula Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will

not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subrecipient's Charter, Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient 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 Subrecipient of this Agreement.

- B. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- C. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to sub agreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- D. **No Debarment.** Neither Subrecipient nor its principals is presently debarred, suspended, or voluntarily excluded from this transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subrecipient agrees to notify TriMet immediately if it is debarred, suspended or otherwise excluded from this federally- assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- E. **Policies and Procedures.** Subrecipient represents and warrants that it has all of the policies and procedures in place to ensure compliance with OAR 732, Divisions 40 and 42, and to achieve the goals and outcomes specified in the Agreement, including but not limited to program and project management, financial management, operations management, procurement, use and maintenance of equipment, records retention, compliance with state and federal civil rights laws, compliance with the Americans with Disabilities Act (ADA), charter and school bus, and safety and asset management.

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

3. **Retention of Records and Audit Expenses**

- A. **Retention of Records.** Subrecipient shall retain and keep and require its subcontractors to retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the STIF Formula Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the expiration date of this Agreement. If there are unresolved audit questions at the end of the six-year period, Subrecipient and its subcontractors shall retain the records until the questions are resolved.
- B. **Capital Asset Records.** For any Capital Asset purchased with STIF Formula Funds by Subrecipient or a subcontractor, all records relating to such Capital Assets shall be maintained for three years after disposition of the Capital Asset.
- C. **Audit Requirements.** To the fullest extent permitted by law, Subrecipient shall save, protect and hold harmless TriMet from the cost of any audits or special investigations performed with respect to the STIF Formula Funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this Agreement. This section does not apply to regular audit and compliance reviews that are conducted pursuant to Section 2 of this Agreement.

4. Subrecipient Sub agreement and Procurement

A. **Sub agreements.** Subrecipient may enter into agreements with contractors or subcontractors (collectively, "sub agreements") for performance of the Project.

- i. All sub agreements must be in writing executed by Subrecipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the sub agreement(s). Use of a sub agreement does not relieve Subrecipient of its responsibilities under this Agreement. Subrecipient agrees to provide TriMet with a copy of any signed sub agreement upon request by TriMet. Any substantial breach of a term or condition of a sub agreement relating to funds covered by this Agreement must be reported by Subrecipient to TriMet within ten (10) days of its being discovered.

B. **Subrecipient's sub agreement(s) shall require the other party to such sub agreement (s) to indemnify, defend, save and hold harmless TriMet, and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including reasonable attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's sub agreement or any of such party's officers, agents, employees or subcontractors ("Claims"). The sub agreement shall specifically state that it is the specific intention that TriMet shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of TriMet, be indemnified by the other party to Subrecipient's sub agreement(s) from and against any and all Claims.**

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

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

C. **Procurements.** Subrecipient shall make purchases of any equipment, materials, or services for the Project comply with all applicable procurement laws and policies.

5. Termination

A. **Termination by Subrecipient.** Subrecipient may terminate this Agreement or terminate or suspend any specific Project funded by this Agreement, effective upon delivery of written notice of termination to TriMet within 30 days, or at such later date as may be established by Subrecipient in such written notice, if:

- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

B. **Effect of Termination.** The expiration or termination of this Agreement or any Project, for any reason, shall not release Subrecipient from any obligation or liability to TriMet, any requirement or obligation that:

- i. Has already accrued hereunder;

- ii. Comes into effect due to the expiration or termination of the Agreement; or
- iii. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement or any Project as provided in this Section, Subrecipient shall promptly identify all unexpended funds and return all unexpended funds to TriMet. Unexpended funds are those funds received by Subrecipient under this Agreement that (i) have not been spent or expended to pay the costs or expenses of the Project or Projects; and (ii) are not required to pay costs or expenses of the terminated Project(s) that will become due and payable as a result of the termination of the Project(s).

Subrecipient's identification and calculation of unexpended funds in this Section is Subject to **Section 2, Audit and Compliance Review**, of this Agreement.

6. General Provisions

- A. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against TriMet or Subrecipient with respect to which the other party may have liability, the notified party must promptly notify the other party in writing of the Third Party Claim and deliver to the other party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a party of the notice and copies required in this paragraph and meaningful opportunity for the party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which TriMet is jointly liable with Subrecipient (or would be if joined in the Third Party Claim), TriMet 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 Subrecipient in such proportion as is appropriate to reflect the relative fault of TriMet on the one hand and of the Subrecipient 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 TriMet on the one hand and of Subrecipient 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. TriMet's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if TriMet had sole liability in the proceeding.

With respect to a Third Party Claim for which Subrecipient is jointly liable with TriMet (or would be if joined in the Third Party Claim), Subrecipient 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 TriMet in such proportion as is appropriate to reflect the relative fault of Subrecipient on the one hand and of TriMet 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 Subrecipient on the one hand and of TriMet 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. If Subrecipient is a public body, Subrecipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, if Subrecipient had sole liability in the proceeding.

- B. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America, TriMet or any other party, organization or individual.

- C. **No Third Party Beneficiaries.** TriMet and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- D. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to Subrecipient's Project Manager or TriMet's Project Manager at the address or number set forth in Paragraph 12 **Communications** of this Agreement, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given three days after the date of mailing. If email is used for communications pursuant to the following Sections, either mail or personal delivery must also be employed by the sender to the recipient and the later of the delivery dates is the date that will be used to calculate any timeframes for responses or cure periods for the recipient: Section 5.2; Exhibit A, Sections 1(A), 3(C), 5, and 6(A); and Exhibit C, Section 7.
- E. **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 TriMet and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County in the State of Oregon. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- F. **Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its contractor(s) and subcontractor(s) complies with these requirements. Subrecipient shall include in any subcontracts to perform services pursuant to this Agreement a provision requiring a subcontractor to comply with this Subsection F, and that failure to do so is a material breach of the subcontract with Subrecipient.
- G. **Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of TriMet. Subrecipient shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement, including but not limited to PERS contributions, workers compensation, unemployment taxes and state and federal income tax withholdings. Subrecipient has no right or authority to incur or create any obligation for or legally bind TriMet in any way. TriMet cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient, its officers, directors, employees, subcontractors or volunteers are not an "officer," "employee," or "agent" of TriMet, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither Subrecipient, nor its directors, officers, employees, subcontractors, or volunteers shall hold themselves out either explicitly or implicitly as officers, employees, or agents of TriMet for any purpose whatsoever. Nothing in this Agreement shall be deemed to create a partnership, franchise, or joint venture between the parties.

EXHIBIT B
SUBRECIPIENT INSURANCE REQUIREMENTS

GENERAL

Subrecipient shall obtain and provide, and require in its first tier sub agreements with entities that are not units of local government as defined in ORS 190.003, if any, that the subcontractor obtain and provide the same insurance applicable to Subrecipient for subcontractor's performance under its sub agreement: i) 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 performance of this Agreement and of any sub agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement and sub agreement. 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 TriMet. Subrecipient shall not commence work under this Agreement, and shall not authorize work to begin under a sub agreement until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements in its sub agreements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the sub agreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a sub agreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a sub agreement in which the Subrecipient is a party.

Subrecipient may be self-insured as long as the amount of insurance are equal to the amounts listed below. Subrecipient shall comply with any requirements of TriMet with respect to these insurance requirements, including but not limited to TriMet issued stop work orders (or the equivalent) until the insurance is in full force, or terminating the Contract as permitted by this Contract, or pursuing legal action to enforce the insurance requirements.

TYPES AND AMOUNTS

- I. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employer's liability insurance with coverage limits of not less than \$500,000 must be included.

- II. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to TriMet. 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 TriMet:

 Bodily Injury, Death and Property
 Damage:

 \$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

 Insurance policy shall include Sexual Abuse/Molestation coverage with limits no less than \$500,000 per occurrence/aggregate.

- III. **AUTOMOBILE Liability Insurance:** Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and

"Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by TriMet:

Bodily Injury, Death and Property
Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED

The Commercial General Liability Insurance and Automobile Liability insurance must include TriMet, and its respective officers, employees and agents as Additional Insureds but only with respect to the Subrecipient's activities to be performed under the Agreement and, with respect to subcontractors, activities to be performed under their sub agreements. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the Subrecipient and the subcontractor 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 this Agreement for Subrecipient, and the effective date of the sub agreement for subcontractors, for a minimum of 24 months following the later of: (i) the Subrecipient's completion and TriMet's acceptance of all services required under this Agreement, and the subcontractors completion and Subrecipient's acceptance of all services required under the sub agreement or, (ii) the expiration of all warranty periods provided under this Agreement with respect to Subrecipient and the sub agreement with respect to the subcontractor. Notwithstanding the foregoing 24-month requirement, if the Subrecipient or subcontractor 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 Subrecipient or subcontractor may request and TriMet may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If TriMet approval is granted, the Subrecipient or subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE

The Subrecipient or its insurer must provide 30 days' written notice to TriMet before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE

Subrecipient shall submit to TriMet a certificate(s) of insurance for all required insurance before the commencement of performance of services. 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. In lieu of filing the certificate of insurance required herein, if Subrecipient is a local government as defined under ORS 190.003, Subrecipient may furnish a declaration that Grantee is self-insured for no less than the amounts required by applicable law.

EXHIBIT C

CAPITAL ASSET REQUIREMENTS

The terms of this Exhibit C applies to all Capital Assets purchased with STIF Formula Funds.

1. Subrecipient shall ensure Satisfactory Continuing Control of a Capital Asset purchased in whole or part with STIF Formula Funding during the period of its useful life.
2. Subrecipient shall inventory Capital Assets purchased in whole or part with STIF Formula Funds. The inventory will include a description of the Capital Asset, date of purchase, purchase price, amount of STIF Formula Funds contributed to the purchase, the source of other funds, the authorized use, the Subrecipient or subcontractor using the Capital Asset, and the condition of the asset.
 - i. If Capital Asset is a vehicle, the inventory must include the size of vehicle, the total number of passenger seats, the total number of ADA stations, the total number of seats when all ADA stations are deployed, the current mileage, and its current condition.
 - ii. If Capital Asset is an improvement to real property, such as a facility, building, or transit shelter, the inventory must include the location of the Capital Asset and its current condition.
3. Vehicles may be replaced using STIF Formula Funding if:
 - i. Subrecipient holds clear title to the vehicle(s) being replaced. Salvaged titles will not be accepted.
 - ii. The vehicle(s) has met or exceeded the applicable useful life guidelines established by the Oregon Department of Transportation (ODOT), or, if federal funds are used to purchase the vehicle, those established by the Federal Transit Administration (FTA), provided such FTA standards are no less stringent.
 - iii. The vehicle has not been previously replaced.
4. By executing an Agreement that includes the purchase of Capital Assets, Subrecipient commits to continually use the vehicle for the approved purpose for the useful life of the vehicle(s).
5. To be eligible to receive STIF Formula Funds for a real property Capital Asset, such as a transit facility, bus barn, maintenance facility, land, or administration building, Subrecipient shall demonstrate one or more of the following:
 - i. Subrecipient ownership of the property upon which the Capital Asset will be located;
 - ii. Subrecipient possession of an executed lease agreement for the property location that will be in place for the useful life of the Capital Asset;
 - iii. Subrecipient possession of an executed lien on the property for the useful life of the Capital Asset;
 - iv. In the case of a Project which will utilize property owned by a local city, county or government, an executed intergovernmental agreement with the property owner guaranteeing ongoing use for the duration of the useful life of the Capital Asset; or
 - v. In the case of a Project to purchase land, an option to purchase the land identified in the Project.

6. Subrecipient: shall:

- i. Comply with all useful life standards established by TriMet and ODOT for Capital Assets acquired pursuant to their STIF Plans, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
 - ii. Use TriMet's and ODOT's established procedures for the disposition of Capital Assets acquired with STIF Formula Fund moneys, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA, provided such FTA standards are no less stringent.
 - iii. Retain the net proceeds from a sale or other disposition of a Capital Asset purchased with STIF Formula Funds in a restricted account to allow Subrecipient to propose reinvesting the proceeds in a future STIF Plan or return the net proceeds to ODOT. Net proceeds are the disposal proceeds less original value, less depreciation, less disposal costs. If non-STIF Formula Funds were used in the original purchase, then only the proportion representing STIF Formula Fund contribution to the purchase are subject to this rule.
 - iv. Comply with TriMet's and ODOT's written procedures to ensure that a Capital Asset is maintained in safe operating condition, or, if federal funds are used to purchase the Capital Asset(s), those established by the FTA provided such FTA standards are no less stringent.
 - v. Maintain insurance coverage, or require subcontractors to maintain insurance coverage, that meets or exceeds the standards in ORS 806.070.
 - vi. Ensure that vehicles purchased in whole or in part with STIF Formula Fund moneys are titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division pursuant to ORS 803.045 and supporting rules, with the Oregon Department of Transportation listed as a security interest holder, subject to the following additional requirements:
 1. If the vehicle is registered in the name of an entity that is not a Qualified Entity or Public Transportation Service Provider, then TriMet, as the Qualified Entity and as required by OAR 732-042-0040(6), must be listed on the vehicle title as the primary security interest holder.
 2. If the vehicle was purchased with federal funds in addition to STIF Formula Fund moneys, and the federal funding source requires the vehicle to be titled otherwise than provided in this Agreement, then the federal titling requirements prevail.
7. Subrecipient shall notify TriMet of the sale, transfer or other disposition of a Capital Asset purchased with STIF Formula Fund moneys and shall report the use of proceeds, if any, from the sale to TriMet.
8. A Subrecipient may transfer its interest in a Capital Asset to an asset of equal or greater value if the transfer is proposed in a STIF Plan which is approved by the Commission.
9. When TriMet is a security interest holder in a Capital Asset, TriMet may exercise all of the rights provided to a secured lien holder under Oregon law, including without limitation, the ability to take control or possession of the Capital Asset if it determines either:
- i. that the asset is not being used for the purpose described in a STIF Plan under which it was funded in whole or part by STIF Formula Fund moneys; or

- ii. if, during a compliance audit conducted pursuant to **Section 2 Audit and Compliance Review** of this Agreement, TriMet determines the asset is not being maintained in a state of good operational repair.

EXHIBIT D
CLACKAMAS COUNTY SCOPE OF WORK

Sub-Recipient Contact Information

- Name of Organization: Clackamas County
- Contact Person: Teresa Christopherson, Administrative Services Manager, Social Services Division
- Address: 2051 Kaen Rd. #135, Oregon City, OR 97045
- Telephone: 503-650-5718
- E-Mail: teresachr@co.clackamas.or.us
- FAX:

TriMet Contact for Reporting:

- Contact Person: Erika Turney, Grants Administrator
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: 503.962.4832
- E-Mail: turneye@trimet.org

TriMet Contact about HB2017 Program:

- Contact Person: Tom Mills, Manager, Service Planning
- Address: 1800 SW 1st Ave., Suite 300, Portland, OR 97201
- Telephone: 503.962.4883
- E-Mail: millst@trimet.org

Term of Contract:

7/1/2019 thru 6/30/2021

Total FY19-FY21 STIF Formula Funds: \$3,008,011

DESCRIPTION OF PROJECTS

Project Description:

Clackamas County will receive Oregon Statewide Transportation Improvement Funds via TriMet to conduct the following activities:

STIF Plan Project Number	Project Name	Project Description	Task Number & Description
30	Clackamas County Transit Development Plan Match	Clackamas County has applied for a TGM grant for a Transit Development Plan. This plan will inform future transit projects throughout Clackamas County, increasing connectivity between our communities and enhancing coordination between providers.	Task 1: Planning
31	Transit Hub Planning	Conduct preliminary planning on a transit hub for coordination of bus services on Mt Hood.	Task 1: Planning
32	Mt. Hood Express Expansion	Increase public transit service on Mt Hood by adding one run daily to the	Task 1: Fixed route operations

		Express service to Timberline and one run daily to the Villages Shuttle service.	
33	Capital Purchase-Mt. Hood Express (partial match)	Provide partial match for federal funds for the purchase of 3 new vehicles in FY18/19 to address service improvements with STIF funds.	Task 1: Purchase 3 standard 35' buses
34	Capital Purchases-Mt. Hood Express	Purchase two new buses to stabilize fleet capacity for existing service as well as address service expansion from STIF and future projects from Transit Development Plan/Transit plan for Mt Hood.	Task 1: Purchase 2 standard 35' buses
35	STIF Plan Administrative Support and Planning	Approved STIF category to cover the costs of administering the STIF program, including project and plan development.	Task 1: Project Administration
36	Capital Purchases-Mt. Hood Express (full match)	Provide full match for federal funds for the purchase of 3 new vehicles in FY18//19 to address service improvements with STIF funds.	Task 1: Purchase 3 standard 35' buses
37	Capital Purchases-Mt. Hood Express (expansion)	Purchase one additional new bus to stabilize fleet capacity for existing service as well as address service expansion from STIF and future projects from Transit Development Plan/transit plan for Mt Hood.	Task 1: Purchase 1 standard 35' bus
38	Carryover For Next Planning Cycle	Funds to be carried over for next STIF cycle for implementation of projects resulting from Transit Development Plan, Transit Hub plan, or Vision around the Mountain if collections exceed estimates	
39	Clackamas County College Shuttle Expansion	Clackamas Community College (CCC) will expand the free CCC Xpress Shuttle to provide evening service and service during summer term. This shuttle is open to the public and provides a direct link between Oregon City and Clackamas.	Task 1: Fixed route operations
40	Oregon City Last Mile Shuttle Service	Clackamas County and the City of Oregon City propose to implement a last mile shuttle to provide enhanced transit access throughout the community, particularly for transit dependent and low income populations.	Task 1: Planning Task 2: Purchase 3 buses <30' Task 3: Fixed route operations
41	Clackamas Industrial Last Mile Shuttle Services	Clackamas County proposes to implement a last mile shuttle to provide enhanced transit access in the Clackamas Industrial area located primarily east of Interstate 205 along Highway 212.	Task 1: Planning Task 2: Purchase 3 buses <30' Task 3: Fixed route operations

42	Tualatin/West Linn/Oregon City Shuttle-Planning	Planning for future shuttle service between Oregon City, West Linn and Tualatin to provide enhanced transportation access for commuters and college students.	Task 1: Planning
43	Milwaukie Industrial Areas Employee Shuttle-Plan	The purpose of the Milwaukie Industrial Area Employee Shuttle Feasibility Study is to evaluate how shuttle service to International Way, the North Milwaukie Industrial Area, and Johnson Creek industrial area businesses could improve transit access.	Task 1: Planning

PLAN BUDGET:

STIF Plan Project Number	FY19	FY20	FY21
30	\$24,000	\$0	\$0
31	\$25,000	\$50,000	
32	\$45,339	\$92,944	\$95,268
33	\$31,730	\$0	\$0
34	\$0	\$167,200	\$167,200
35	\$14,817	\$33,651	\$38,537
36	\$40,767	\$0	\$0
37	\$0	\$0	\$167,200
38	\$0	\$0	\$139,357
39	\$42,691	\$115,196	\$115,196
40	\$44,000	\$407,138	\$285,821
41	\$44,000	\$407,138	\$285,821
42	\$22,000	\$29,000	\$0
43	\$0	\$77,000	\$0
Subtotal	\$334,344	\$1,379,267	\$1,294,400
Grand Total:	\$3,008,011		

REPORTING:

Plan Outcomes	FY19-21 Plan	Quarterly Report	Annual Report
Revenue Miles	113,728	X	
Revenue Hours	10,609	X	
Rides	72,978	X	
Number of new shared stops with other transit providers	10	X	
Number of students in grades 9-12 served by demand response	n/a	X	
Number of students in grades 9-12 with free or reduced fares	n/a	X	
Other outcomes		X	
Number of individuals within a ½ mile of a transit stop for fixed route transit	67,389		X
Number of low-income households within a ½ mile of a transit stop for fixed route transit	16,080		X
Number of students in grades 9-12 attending a school served by transit	4,179		X

Number of rides to students in grades 9-12	n/a		X
Program Criteria			
Increased frequency to areas with a high percentage of low-income households			X
Expanded routes or services to areas with a high percentage of low-income households			X
Reduced fares in communities with a high percentage of low-income households			X
Procurements of low or no emission buses for use in areas with a population of 200,000 or more			X
Improved frequency and reliability of service between communities in and out of the Qualified Entity's area			X
Improved coordination among Public Transportation Service Providers to reduce fragmentation of service			X
Implementation of programs to provide student transit service for students in grades 9-12			X
Capital Assets			
Acquired, purchased or leased capital assets Qualified Entities and Public Transportation Service Providers using STIF funds		X	
Low-Income Tax Mitigation			
Report on mitigating the tax on low-income passengers			X
Audit Reports			
Copy of financial audits, including STIF procedures			X

**EXHIBIT E – STIF FUNDING DISBURSEMENT FORMULA
PORTLAND METRO/TRIMET QUALIFIED ENTITY AREA**

FY19 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE

	FY19 Projected Total	Adjustment to FY19 Projected Total	Regional Coordination Program	Adjustment to FY19 Projected Total with Regional Coordination	Percent of Adjustment to FY19 Projected Total with Regional Coordination	Not to Exceed FY19 Plan Budget
TriCounty Total - ODOT Dec. '18 Projection	\$ 20,027,000					
TriMet - Service, LIF, Capital, Student Fare, ED, Ebus	\$ 18,740,000	\$ 18,740,000	\$ -	\$ 17,569,035	0.8772674	\$ 26,754,708
Ride Connection - STIF E&D	\$ -	\$ -	\$ -	\$ -	0.0000000	\$ -
Portland Streetcar	\$ 350,000	\$ 350,000	\$ -	\$ 350,000	0.0174764	\$ 350,000
Canby	\$ 106,605	\$ 105,730	\$ -	\$ 105,730	0.0052793	\$ 64,044
Sandy	\$ 49,427	\$ 49,021	\$ -	\$ 49,021	0.0024477	\$ 57,709
SCTD	\$ 58,683	\$ 58,201	\$ -	\$ 58,201	0.0029061	\$ 68,508
Wilsonville	\$ 447,238	\$ 443,563	\$ 120,000	\$ 563,563	0.0281402	\$ 1,198,516
Clackamas County	\$ 165,024	\$ 163,668	\$ 152,691	\$ 316,359	0.0157966	\$ 334,344
Multnomah County	\$ 19,000	\$ 19,000	\$ 243,250	\$ 262,250	0.0130948	\$ 265,100
Washington County	\$ 98,628	\$ 97,817	\$ 596,000	\$ 693,817	0.0346441	\$ 728,000
Columbia County CC Rider	\$ -	\$ -	\$ 59,024	\$ 59,024	0.0029472	\$ 59,024
Total	\$ 20,034,604	\$ 20,027,000	\$ 1,170,965	\$ 20,027,000		\$ 29,879,953

ADJUSTMENT TO FY19 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.

Difference between FY19 Projected Total (\$20,027,000) and Sum of Individual Projected Totals (\$20,034,604)	\$ 7,604
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Proportional Distribution		
Canby	\$ 106,605	11.52%
Sandy	\$ 49,427	5.34%
SCTD	\$ 58,683	6.34%
Clackamas County	\$ 165,024	17.83%
Washington County	\$ 98,628	10.66%
Wilsonville	\$ 447,238	48.32%
Total	\$ 925,604	

FY20 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE

	FY20 Projected Total	Adjustment to FY20 Projected Total	Regional Coordination Program	Adjustment to FY20 Projected Total with Regional Coordination	Percent of Adjustment to FY20 Projected Total with Regional Coordination	Not to Exceed FY20 Plan Budget
TriCounty Total - ODOT Dec. '18 Projection	\$ 46,194,000					
TriMet - Service, LIF, Capital, Student Fare, ED, Ebus	\$ 42,655,346	\$ 42,655,346	\$ -	\$ 39,299,367	0.8507461	\$ 36,854,657
Ride Connection - STIF E&D	\$ 677,654	\$ 677,654	\$ -	\$ 677,654	0.0146697	\$ 677,654
Portland Streetcar	\$ 700,000	\$ 700,000	\$ -	\$ 700,000	0.0151535	\$ 700,000
Canby	\$ 247,585	\$ 243,958	\$ -	\$ 243,958	0.0052812	\$ 128,087
Sandy	\$ 114,793	\$ 113,111	\$ -	\$ 113,111	0.0024486	\$ 131,068
SCTD	\$ 136,290	\$ 134,293	\$ -	\$ 134,293	0.0029071	\$ 163,890
Wilsonville	\$ 1,036,944	\$ 1,021,751	\$ 553,600	\$ 1,575,351	0.0341029	\$ 1,587,116
Clackamas County	\$ 383,261	\$ 377,646	\$ 1,035,472	\$ 1,413,118	0.0305909	\$ 1,379,267
Multnomah County	\$ 46,000	\$ 46,000	\$ 553,050	\$ 599,050	0.0129681	\$ 603,110
Washington County	\$ 227,576	\$ 224,241	\$ 1,160,636	\$ 1,384,877	0.0299796	\$ 1,399,136
Columbia County CC Rider	\$ -	\$ -	\$ 53,221	\$ 53,221	0.0011521	\$ 53,221
Total	\$ 46,225,449	\$ 46,194,000	\$ 3,355,979	\$ 46,194,000		\$ 43,677,206

ADJUSTMENT TO FY20 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.

Difference between Dec. '18 TriCounty Projected Total (\$46,194,000) and Sum of Individual Projected Totals (\$46,225,449)	\$ 31,449
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Proportional Distribution		
Canby	\$ 247,585	11.53%
Sandy	\$ 114,793	5.35%
SCTD	\$ 136,290	6.35%
Clackamas County	\$ 383,261	17.86%
Washington County	\$ 227,576	10.60%
Wilsonville	\$ 1,036,944	48.31%
Total	\$ 2,146,449	

FY21 STIF DISBURSEMENT – BASED ON 100% ODOT DEC. '18 ESTIMATE

	FY21 Projected Total	Adjustment to FY21 Projected Total	Regional Coordination Program	Adjustment to FY21 Projected Total with Regional Coordination	Percent of Adjustment to FY21 Projected Total with Regional Coordination	Not to Exceed FY21 Plan Budget
TriCounty Total - ODOT Dec. '18 Projection	\$ 52,974,000					
TriMet - Service, LIF, Capital, Student Fare, ED, Ebus	\$ 49,446,709	\$ 49,446,709	\$ -	\$ 46,446,709	0.8767831	\$ 44,232,750
Ride Connection - STIF E&D	\$ 328,291	\$ 328,291	\$ -	\$ 328,291	0.0061972	\$ 328,291
Portland Streetcar	\$ 721,000	\$ 721,000	\$ -	\$ 721,000	0.0136105	\$ 721,000
Canby	\$ 282,102	\$ 279,433	\$ -	\$ 279,433	0.0052749	\$ 538,629
Sandy	\$ 130,797	\$ 129,560	\$ -	\$ 129,560	0.0024457	\$ 150,097
SCTD	\$ 155,290	\$ 153,821	\$ -	\$ 153,821	0.0029037	\$ 169,891
Wilsonville	\$ 1,182,997	\$ 1,171,805	\$ 553,600	\$ 1,725,405	0.0325708	\$ 1,344,116
Clackamas County	\$ 436,694	\$ 432,562	\$ 686,838	\$ 1,119,400	0.0211311	\$ 1,294,400
Multnomah County	\$ 52,000	\$ 52,000	\$ 534,613	\$ 586,613	0.0110736	\$ 593,263
Washington County	\$ 261,291	\$ 258,819	\$ 1,168,349	\$ 1,427,168	0.0269409	\$ 1,467,849
Columbia County CC Rider	\$ -	\$ -	\$ 56,600	\$ 56,600	0.0010684	\$ 56,600
Total	\$ 52,997,172	\$ 52,974,000	\$ 3,000,000	\$ 52,974,000		\$ 50,896,886

ADJUSTMENT TO FY21 PROJECTED TOTAL WAS DETERMINED BY PROPORTIONALLY REDUCING CLACKAMAS AND WASHINGTON COUNTY PROJECTED TOTALS.

Difference between Dec. '18 TriCounty Projected Total (\$52,974,000) and Sum of Individual Projected Totals (\$52,997,172)	\$ 23,172
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Proportional Distribution		
Canby	\$ 282,102	11.52%
Sandy	\$ 130,797	5.34%
SCTD	\$ 155,290	6.34%
Clackamas County	\$ 436,694	17.83%
Washington County	\$ 261,291	10.67%
Wilsonville	\$ 1,182,997	48.30%
Total	\$ 2,449,172	

EXHIBIT F

Statewide Transportation Improvement Fund Agreed-Upon Audit Procedures

Any Qualified Entity or Public Transportation Service Provider (entity or subrecipient), as defined under OAR 732-040-0005, that receives STIF money is required to be audited on the use of those funds per OAR 732-040-0015. Consistent with guidance provided by the Oregon Secretary of State, the Oregon Department of Transportation developed agreed-upon audit procedures for the program audit of the Statewide Transportation Improvement Fund (STIF). The Agreed-Upon Audit Procedures are established in accordance with Generally Accepted Government Auditing Standards (GAGAS) and American Institute of Certified Public Accountants (AICPA) AT-C Section 215. ODOT set forth the minimum procedures required for an audit of STIF funds. As set forth under Section 2, TriMet has also developed additional audit procedures based on ODOT's Compliance Guide: Monitoring Subrecipient Compliance with STIF Requirements. These agreed Upon Procedures detailed below are to be added to the STIF recipient's annual financial audit process.

STIF Funded Services

1. What best describes the STIF-funded services operated by this Subrecipient, identify all that apply?
 - Light rail operating expenses
 - Creation of new systems and services with origins, destinations, or stops in Oregon
 - Maintenance or continuation of systems and services (only after new services has been place in operation)
 - Planning for and development of a Local Plan or future STIF Plan to improve Public Transportation Service
 - Local match for state and federal funds which also provide Public Transportation Service
2. Did the services, funded by STIF, meet eligibility requirements?
3. Did the entity provide school bus or charter services?
4. Note any other observations that may impact the findings from this review, if any: (such as Infrastructure, political, key staff or major funding changes that might alter the landscape at the local level.

Financial Management

1. What types of STIF funds did the entity receive?
 - a. Formula
 - b. Discretionary
 - c. Intercommunity
2. Does the entity have a separate account in their accounting system for each type of STIF fund received?
Yes/No. If no, attach an explanation.
3. How much interest was earned on STIF Formula funds?
 - a. Was interest spent on STIF-approved expenditures?
 - b. If 100% of interest was not expended on STIF approved expenditures, what amount will be carried forward into a future STIF Plan?
4. Did the entity spend STIF Formula funds, including interest, on expenditures NOT included in a STIF Plan?
If yes, attach a summary of expenditures and narrative explaining the deviation from the STIF Plan.
5. What amount of unspent STIF Formula funds were carried forward to the next Fiscal Year?
6. Does the Subrecipient use the same policies and procedures to account for, and expend, STIF funds as it does for all other Federal and State grant funds? Yes/No. If no, attach an explanation.

7. For each STIF award, does the Subrecipient's accounting system provide for the following?
 - a. Authorizations
 - b. Obligations
 - c. Funds received
 - d. Program income
 - e. Outlays
 - f. Unobligated balances
8. Are STIF accounting records supported by source documentation (e.g. canceled checks, paid bills, payrolls, contracts)? Yes/No. If no, attach an explanation.
9. Are bank statements reviewed and reconciled at least monthly by someone other than the person who disburses funds from the STIF account? Yes/No. If no, attach an explanation.
10. Does the Subrecipient maintain written policies and procedures for documenting personnel compensation regarding employees whose time is charged to the STIF program? Yes/No. If no, attach an explanation.
11. Personnel records: Yes/No. If no, attach an explanation
 - a. Are personnel records supported by a system of internal controls that provide reasonable assurance the charges are accurate, allowable, and properly allocated?
 - b. Are personnel records incorporated into the Subrecipient's official records?
 - c. Do personnel records reasonably reflect the total activity for which the employee is compensated?
 - d. Do personnel records encompass state assisted activities, as well as all other activities compensated by the subrecipient?
 - e. Do not rely on estimates as a basis to charge time to STIF activities?
12. Did the entity supplant local funding sources earmarked for existing services with STIF funds?

Internal Controls

1. Are members of the entity's governing board actively involved in the acceptance of the STIF grant award and oversight of its personnel in the execution of STIF activities? Yes/No?

If no, attach an explanation.

If yes, describe and note the governing board's role in providing oversight of the STIF grant.

2. Do the procedures employed by the Subrecipient in handling cash receipts and disbursements of STIF funds include the following safeguards:
 - a. Receipts are promptly logged, restrictively endorsed and deposited in an insured bank account?
 - b. Bank statements are promptly reconciled to the accounting records and are reconciled by someone other than the individuals handling cash, disbursements and maintaining accounting records?
 - c. All disbursements (except petty cash or electronic funds transfer disbursements) are made by pre-numbered checks?
 - d. Supporting documents (e.g. purchase orders, invoices) accompany the checks submitted for signature, and are marked paid or otherwise prominently noted after the payments are made?
 - e. Checks drawn to "cash" and advance signing of checks are prohibited?
 - f. Multiple signatures are required on checks?

Eligible use of STIF Funds

1. STIF funds are appropriated to finance investments and improvements in public transportation services, except that monies may not be used for light rail capital expenses. Based on what the Subrecipient indicates during the review, system website, and other public information literature, do the services implemented with STIF eligibility services criteria? Yes/No. If no, attach an explanation.

Capital Asset Management

Eligible capital assets are defined as real property or tangible items with a purchase price of \$5,000 or more and a useful life of at least one year (consistent with 2 CFR 200.33), with the exception of light rail capital.

1. Did the Subrecipient acquire light rail capital? Yes/No. If yes, provide an explanation as this is an ineligible use of funds.
2. Did the Subrecipient maintain adequate insurance coverage pursuant to ORS 806.080?
 - i. Does the insurance coverage maintained on the asset meet or exceed the standards in ORS 806.070?
3. Did the Subrecipient own or develop any real property using STIF funds? N/A, Yes/No. If yes, then:
 - a. If real property (facilities) was purchased/constructed, is the real property being used in whole or in part for transit purposes consistent with the STIF Plan? N/A, Yes/No. If no, attach an explanation. If yes,
 - b. Is the real property located in a flood zone?
4. If the Subrecipient utilized STIF Formula Funds to purchase or improve real property, is there a written facilities maintenance plan used to ensure the facility is maintained in a state of good repair? Yes/No. If no, attach an explanation.
5. Did the Subrecipient purchase a vehicle? Yes/No. If yes, then:
 - a. What amount and percentage of STIF funding was used to purchase the vehicle(s)?
 - b. Is each vehicle purchased titled with the Oregon Department of Transportation Driver and Motor Vehicle Services Division?
 - c. Identify the primary security interest holder on each vehicle purchased?
6. Does the Subrecipient maintain an asset inventory of all STIF acquired capital? N/A, Yes, No. If no, attach an explanation. If yes, does the inventory contain the following elements:
 - i. Equipment:
 1. description of the asset,
 2. date of purchase,
 3. purchase price,
 4. amount of STIF monies contributed to the purchase price,
 5. the ratio of STIF funds to total purchase price,
 6. source of other funds used,
 7. current use of the asset,
 8. condition of the asset, and
 9. name of Subrecipient or recipient using the asset?
 - ii. Vehicles: If rolling stock was purchased, did the asset inventory list include items 1-9 above and:
 10. size of vehicle
 11. total number of passenger seats
 12. total number of ADA stations
 13. total number of seats when all ADA stations are in use, and

14. current mileage
15. useful life benchmark

iii. If real property was purchased, did the asset inventory list include items 1-9 above and:
15. the location of the asset?

8. Does the Subrecipient have written procedures that ensure that STIF funded assets (including vehicles) are maintained in a state of good repair? Yes/No. If no, attach an explanation.
9. Did the Subrecipient dispose of any STIF-funded assets during the fiscal year under audit? Yes/No. If yes, then:
 - a. Is there evidence that the asset was beyond the useful life?
 - b. Were the disposition proceeds greater than \$5k?
 - b. If yes, were the disposition of proceeds of any such sale returned to QE or ODOT or retained to reinvest in a future STIF Plan Capital Project?

STIF Record Retention

1. Has the entity established a record retention policy associated with its use of STIF funds? If yes, does the policy meet minimum STIF record requirements of no less than 6 years following the entity's final disbursement under the STIF Plan/or grant agreement?
2. Does Subrecipient have written records that require the entity to maintain all records relating to capital assets for three (3) years following disposition?

Procurement

1. Does the entity have procurement policies and procedures in place that follow OR 279 requirements and is there evidence that they follow their own agency procurement requirements?
2. Did the entity competitively procure for all services and/or purchases using STIF funding? If no, attach an explanation.
3. Does the agreement between recipient and subcontractor include language that specifically permits the Agency, the Secretary of State of Oregon, or their authorized representative access to data and records held?
4. Did the entity subcontract with lower tier recipients to provide services funded with STIF funds? If yes, then:
 - a. Was all required STIF information as identified in 2.2 included in the agreement??
 - b. Did the entity have an established oversight program to ensure lower tier recipients/subcontractor complied with STIF requirements?

If the entity received a review/audit from ODOT and FTA in the last year to assess the agency's internal controls and compliance with Federal and state laws, rules, requirements and regulations, then the following additional audit procedures do not apply:

Civil Rights

1. Is the Subrecipient required to prepare a Title VI Program pursuant to FTA Circular 4702.1B? If yes, then:
 - a. Has the Subrecipient established a complaint form and a process to resolve complaints? Yes/No. If no, attach an explanation.

2. Does the LEP element of the program identify any LEP populations that need key documents translated to the specified language? If yes,
 - a. Has the subrecipient translated key documents? Yes/No. If no, attach an explanation.
3. Does the Subrecipient provide fixed route service or operate 50 or more fixed route vehicles in peak service located in a UZA with a population of 200k or more? If yes, then:
 - a. Has the Subrecipient adopted the required service policies and elements (ex. distribution of transit amenities, by mode and vehicle assignment, by mode) and standards (ex: vehicle load, by fixed mode, by peak and off peak periods, vehicle headway, on-time performance service availability for each mode)? If no, attach an explanation.
4. Did the Subrecipient track, resolve and respond to Civil Rights complaints?

Americans with Disabilities ACT (ADA)

1. Determine the compliance status of the Subrecipient with ADA, by type and service mode.
 - a. For Fixed Modes:
 - i. Non-commuter bus (traditional fixed route)
 - ii. Commuter bus
 - iii. Intercity bus
 - iv. Route/point deviation (with deviations limited to certain riders)
 - b. For Demand Response:
 - i. Complementary paratransit
 - ii. Route/point deviation (deviations provided to all riders)
 - iii. General demand response service
2. Does the Sub recipient engage in any practices that would be discriminatory (such as extra charges, requiring passengers to transfer from their mobility device to a bus seat, requiring a passenger to travel with a PCA, etc.)? Yes/No. If yes, attach an explanation.
3. Has the Subrecipient designated an individual to be responsible for taking requests for reasonable modification of services and policies and to take complaints regarding the ADA? Yes/No. If no, attach an explanation.
4. If the transit system operates fixed route modes, do the drivers announce stops when required? If yes, then:
 - a. Does the Subrecipient operate a complementary paratransit system that meets the required service criteria? If Yes, then:
 - i. Does the Subrecipient manage an eligibility process to determine, unconditional, conditional, temporary, or denied eligibility?
5. If demand response modes are operated, is the demand response fleet 100% accessible? Yes/No If no, then:
 - a. Does Subrecipient operate "equivalent service"?
6. If system information, brochures, rider guides, etc. available in alternative formats upon request? Yes/No. If no, attach an explanation.

7. Does the system offer accessible telecommunication access (e.g., TTY)? Yes/No. If no, attach an explanation.
8. Did the Subrecipient track, resolve and respond to ADA related complaints?

References

1. OAR 732-40 Statewide Transportation Improvement Fund – General Information
2. OAR 732-42 Statewide Transportation Improvement Fund – Formula
3. ORS 184.758 & ORS 184.751
4. Civil Rights Restoration Act of 1987
5. “Sections 503 and 504 of the Rehabilitation Act of 1973, as amended
6. Americans with Disabilities Act of 1990, as amended
7. Title VI of the Civil Rights Act of 1964, as amended
8. Federal Transit Laws, Title 49, U.S.C.
9. Equal Employment Opportunity Act of 1972
10. Civil Rights Act of 1991
11. Equal Pay Act of 1963
12. Age Discrimination in Employment Act of 1967
13. Title IX of the Education Amendments of 1972
14. Uniformed Services Employment & Reemployment Rights Act of 1994
15. Single Audit Act of 1984, as amended
16. ORS 803-045 and 803-070

EXHIBIT G

Statewide Transportation Improvement Fund Formula Fund Reporting Requirements Overview FINAL, May 8, 2019

STIF REPORTING BACKGROUND

This document provides an overview for both quarterly and annual reporting requirements for the Statewide Transportation Improvement Fund (STIF).

The quarterly reporting requirements are outlined in OAR 732-042-0035(1), which states "Quarterly Reports:

Using a form provided by the Agency, each Qualified Entity [(QE)] shall
prepare a quarterly report to [ODOT] which details Project progress, outcomes achieved, and
expenditures of STIF Formula Fund moneys by itself and its Sub-Recipients."

The capital asset reporting requirements outlined in OAR 732-042-0035(3) and OAR 732-044-0040(2) will be completed by recipients in the Agency Periodic Report (APR) on a quarterly basis.

The annual reporting requirements outlined in OAR 732-040-0025 include the following three additional reports: 1) low-income mitigation actions, 2) annual QE budget, and 3) annual audit reports.

The purpose of this document is for QEs and Public Transportation Service Providers (PTSPs) to become familiar with the upcoming quarterly and annual reporting requirements for STIF Formula projects.

ODOT staff will develop separate reporting requirements for STIF Discretionary/Intercommunity funded projects and instructions will be provided to QEs and PTSPs in advance.

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ROLES AND RESPONSIBILITIES

QEs and PTSPs will have different roles and responsibilities for STIF reporting requirements.

The following are the QEs roles and responsibilities:

- Initiate and submit the quarterly report, STIF Periodic Report (SPR)
- Delegate relevant projects in the SPR to their PTSPs so that they can enter updates
- Report on STIF capital assets in the Agency Periodic Report (APR)
- Bundle and submit all low-income mitigation action reports from their PTSPs (including PTSPs that are only receiving STIF discretionary funds)
- Provide a copy of their adopted annual budget to ODOT
- Provide copies of their financial audits to ODOT, including STIF procedures

The following are the PTSPs roles and responsibilities:

- Receive SPR prompt from their QE and enter project updates
- Submit an annual low-income mitigation actions report to their QE
- Provide copies of financial audits to ODOT, including STIF procedures
- Report on STIF capital assets in the Agency Periodic Report (APR)

QUARTERLY VS. ANNUAL REPORTING REQUIREMENTS SUMMARY TABLE

Type of Reporting	Quarterly Basis	Annual Basis	Where to Submit
Outcomes	As applicable to individual projects as specified in an approved STIF Plan: <ul style="list-style-type: none"> • revenue miles • revenue hours • rides • number of new stops shared with other providers • number of students in grades 9-12 served by demand response • number of students in grades 9-12 with free or reduced fares 	<ul style="list-style-type: none"> • number of people within a half mile of transit stop • number of Low-Income Households within a half mile of transit stop • number of students in grades 9-12 attending a school served by transit • number of rides provided to students in grades 9-12 	STIF Periodic Report
Program Criteria	N/A	<ul style="list-style-type: none"> • increased frequency to areas with high-percentage of low income households • expanded routes or services to areas with 	STIF Periodic Report

		<p>high-percentage of Low-Income Households</p> <ul style="list-style-type: none"> • reduced fares in communities with high percentage of Low-Income Households • procurements of low-or no-emission buses for use in areas with population of 200,000 or more • improved frequency and reliability of service between communities in and out of QE's service area • improved coordination among PTSPs to reduce fragmentation of service • implementation of programs to provide student transit service for students in grades 9-12 	
Capital Assets	Acquired, purchased or leased Capital Assets by QEs and PTSPs using STIF funds	N/A	Agency Periodic Report
Low-Income Tax Mitigation	N/A	Report on mitigating the impact of the tax on low-income passengers	Attach to STIF Periodic Report
QE Budget	N/A	Copy of QE's adopted annual budget	Email hyperlink to ODOTPTDreporting@odot.state.or.us
Audit Reports	N/A	Copies of financial audits, including STIF procedures	ODOTPTDreporting@odot.state.or.us

QUARTERLY REPORTING

Quarterly Reporting Introduction

The SPR is for QEs to report on their STIF Plan for a quarterly time period. ODOT staff and OGMA Consulting Corp. are developing the SPR template in the Oregon Public Transit Information System (OPTIS). This quarterly report template will be finalized in July 2019. It will be the responsibility of the QEs to gather all applicable information from their PTSPs and complete the SPR. The SPR template is designed for the QE to initiate the SPR and then delegate the appropriate projects to the PTSPs for reporting. The SPR will be auto-populated from the QE's STIF Plan. There will be fields and text boxes for entering status updates for each project and the associated tasks.

ODOT staff will track the completion of the SPR and whether a QE has substantially complied with its approved STIF Plan (see STIF Guidance for Determining Whether Expenditures are Substantially Compliant and Consistent with STIF Plan). Following ODOT staff review of each submitted SPR, staff will identify any compliance issues and work with the QE toward resolution. After the review, QEs will be notified that they 1) Have complied with the approved STIF Plan or 2) Failed to substantially comply with the approved STIF Plan. If there are three or more SPRs within the past two years that indicate the QE failed to substantially comply with its approved STIF Plan, the QE will be required to include a description of the QE's strategies to ensure that it will substantially comply with the proposed STIF Plan in the next biennium. (Remediation strategy requirements are specified in OAR 732-042-0015(2)(h).) Such a QE is at risk of the OTC rejecting its next proposed STIF Plan.

ODOT staff will review the submitted SPR and follow up with observations that could lead to a QE receiving technical assistance from its regional transit coordinator. For example, ODOT could share a current best practice to aid the QE. The SPR will also enable ODOT to track the QE's STIF Plan outcomes and the overall impact of the STIF formula funds.

Quarterly Reporting and Disbursements

Table 1 shows the general schedule for reporting and disbursement of STIF Formula funds. The transit tax is due from businesses to the Oregon Department of Revenue (DOR) approximately one month after the end of the tax assessment period. The DOR releases the revenues to ODOT approximately one month after they are due to DOR. ODOT then calculates the disbursement amounts and releases the funds to the QEs approximately one month later.

Table 1. STIF Formula Disbursement Schedule

STIF Formula Fund Disbursement and Reporting Schedule				
Disbursement to QEs	Jan 15	Apr 15	Jul 15	Oct 15
QE STIF Plan reporting period	Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec
QE STIF Plan reports due to ODOT	May 15	Aug 14	Nov 14	Feb 14

Tables 2 and 3 show the disbursement and reporting schedules for QEs that submitted their STIF Plans in November 2018 and May 2019, respectively. The schedule for these initial disbursements and reporting is different because they are occurring off-cycle as reflected in the tables below.

For QEs that submitted in November 2018 (see Table 2), the first STIF report (FY 2019 Q4) is due on August 14, 2019, and will cover expenditures and outcomes for Q1, Q2, Q3, and Q4 of FY 2019 (July 1, 2018 through June 30, 2019), to the extent the QE made expenditures during these quarters.

For QEs that submitted in May 2019 (see Table 3, below), the first STIF report is due on February 14, 2020, and will cover all of FY 2019 and Q1 and Q2 of FY 2020, to the extent the QE made expenditures during these quarters.

Table 2. Quarterly Reporting Schedule for November 2018 Submissions

STIF Cycle 1 (November 2018 Submissions)			
Disbursement to QEs	May 15, 2019	Jul 15, 2019	Oct 15, 2019
QE STIF Plan reporting period	Jul 2018-Jun 2019	Jul-Sep 2019	Oct-Dec 2019
QE STIF Plan reports due to ODOT	Aug 14, 2019	Nov 14, 2019	Feb 14, 2020

Table 3. Quarterly Reporting Schedule for May 2019 Submissions

STIF Cycle 2 (May 2019 Submissions)	
Disbursement to QEs	Oct 15, 2019*
QE STIF Plan reporting period	Jul 2018-Dec 2019
QE STIF Plan reports due to ODOT	Feb 14, 2020

*Contingent upon STIF Plan approval

STIF Periodic Report vs. Agency Periodic Report

The SPR will have a similar design to the existing APR but is being developed to include STIF-specific items. Both the SPR and the APR are quarterly reports. The SPR will not replace the APR, but is a supplemental OPTIS document for reporting the additional information required under STIF. Unlike the APR, the details (e.g., expenditure, capital outcomes) reported on the SPR are at the project task level, not at the agency level. Also, the APR reports all sub-grants (including STIF) and the SPR reports only STIF grants. Currently, the SPR is for the STIF Formula fund only; it may be modified to include reporting for STIF Discretionary/Intercommunity funds. The APR can be downloaded as a PDF whereas the SPR can be downloaded as an Excel spreadsheet.

The SPR includes the following STIF-specific items:

- Project Status (with deliverables)
- Task Level Expenditures
- Measurable Benefits
- Capital Outcomes
- Program Criteria

The SPR does NOT include the following APR-specific items; these will continue to be reported at the agency level through the APR:

- Volunteer and Non-Cash Resources
- Assets
- Accidents
- Civil Rights

Note: STIF capital assets will be added to the asset register in OPTIS by ODOT.

STIF Periodic Report Template

Final screenshots for the entire SPR and required information are in process and will be provided at a later date. (Please note the OPTIS and SPR figures included in this document are sample screenshots and are not from the final SPR template.) ODOT staff have provided additional context on what will be displayed and the required information in the next sections. As previously mentioned, the SPR will be auto-populated from the QE's STIF Plan. There will be fields and text boxes for entering status updates for each project and the associated tasks. ODOT will require the QE to report on all projects and associated tasks identified in its STIF Plan. Text boxes will be available for the projects and associated tasks to provide additional context on any changes and/or deviations from the STIF Plan. Rationales for changes or inactivity will be required in the SPR.

STIF Periodic Report Process

STIF Periodic Reports will be created from the OPTIS main navigation menu (see Figure 1). The OPTIS user will be prompted to select the QE for which it will be reporting. The QE will only be able to select their own STIF Plan in order to complete the SPR. Once the STIF Plan is selected, the QE is then presented with a page from which they can create the SPR. The QE can select the project tasks and send them to the relevant PTSPs for their completion in OPTIS. Also, if a QE is a PTSP, then it can only complete the report when prompted by its QE. For example, Crook County is a QE but if it is listed in the Confederated Tribes of the Warm Spring Reservation STIF Plan as a PTSP, it will need to enter project updates when the Confederated Tribes of the Warm Spring Reservation delegates the SPR items to Crook County.

Figure 1. OPTIS Main Menu



A completed SPR will provide an overview of the entire planned STIF Plan budget and remaining funding (see Figure 2).

Figure 2. SPR Project Task Report

OPTIS
Close

Print

Refresh

Help

Complete Step (Prepared)

Maintain

Actions

Work Flow History

STIF Project Task Report

Report for: FY2019 Qtr.1: July - September 2018 Number: SPR-19-0502-02

Public Transit Service Provider:	
Mailing Address:	
City, State, Zip:	
Prepared by:	E-mail:
Phone No.:	Fax No.:

Provider

I have certified that this document is correct to the best of my knowledge and that I am the authorized representative shown below.

Authorized by:	Date:
----------------	-------

Attachments Exist

Budget

	Planned	Total To Date	Remaining
STIF Funds	\$160,000.00	\$82,440.00	\$77,560.00
Other Funds	\$20,000.00	\$7,820.00	\$12,180.00
Total Expenditure	\$180,000.00	\$90,260.00	\$89,740.00
Future Expenditure	\$32,460.00		

Expenditures

	Previous	Current	Total To Date
STIF Funds	\$12,340.00	\$70,100.00	\$82,440.00
Other Funds	\$7,820.00	\$0.00	\$7,820.00
Total Expenditure	\$20,160.00	\$70,100.00	\$90,260.00

Project Status

Project Task #	Title

As described in OAR 732-042-0035(1), QEs and PTSPs will be required to report project progress, including expenditures and outcome measures. Providers will enter the project status in an update field and enter the amount spent in an expenditures field.

Outcomes and Reporting Methods

The outcomes reported in the SPR will be reported either quarterly or annually depending on the type of project and activity included in the STIF Plan. The reported outcomes must reflect the QE's progress on the outcomes and benefits, considering the estimated outcomes listed in the QEs OTC-approved STIF Plan. QEs must report on all estimated outcomes and/or benefits from a STIF Plan.

ODOT staff has developed guidance below to assist in reporting outcomes and identifying what is attributable to STIF for the following: revenue miles, revenue hours, rides, number of new stops shared with other providers, number of students in grades 9-12 served by demand response, and number of students in grades 9-12 with free or reduced fares.

A provider may have a direct charge accounting method with STIF funds to report their revenue miles, revenue hours, and rides. Otherwise, an acceptable method for reporting the following outcomes is to allocate the data by the funding percentage: revenue miles, revenue hours, and rides. The funding percentage is calculated as the actual expenditures for STIF as a percentage of total expenditures from other sources. The provider will also

calculate the total number of miles, number of hours, and the number of rides in the STIF Plan reporting period, then apply the STIF funding percentage. The provider will need to separate new and existing routes and indicate what is attributable to STIF funding. ODOT staff will be reviewing the fixed route and demand response service separately.

QEs should report when a new shared stop goes into service. A new shared stop may be a stop that was served by one provider and is now served by a second provider or a stop that was served by two or more providers and is now served by the QE.

Reporting methods may vary for reporting on number of students in grades 9-12 served by demand response and the number of students in grades 9-12 with free or reduced fares. The provider should use the most accurate method for counting student ridership such as onboard ridership surveys, passenger counts, and/or requesting age/grade information when scheduling demand response rides.

Figure 3. SPR Outcome Measures

The screenshot shows the '3. Outcome Measures' section of the OPTIS system. At the top, there is a blue header with the 'OPTIS' logo and a 'Close' button. Below the header, the section title '3. Outcome Measures' is displayed, followed by 'Item 1.1' and 'Number: SPR-19-0502 -02'. A 'Control #' field contains the value '10095225'. A navigation bar includes buttons for 'Skip', 'Back', 'Save', 'Next', and 'Finish'. The main content area is titled 'Outcome Measures' and contains a help icon and the instruction: 'Enter the applicable measures for this task in this reporting period.' Below this, there are several input fields with labels: 'Revenue Miles', 'Revenue Hours', 'Rides', '# of New Stops Shared with Other Providers', '# of Rides to Students in Grades 9-12', '# of Students in Grades 9-12 Served by Demand Response', '# of Students in Grades 9-12 with Free or Reduced Fares', and 'Other Benefit'. Each label is followed by a text input box.

Quarterly STIF Capital Assets

The capital asset reporting requirements outlined in OAR 732-042-0035(3) and OAR 732-044-0040(2) will be completed by the provider in the APR on a quarterly basis. This reporting includes acquired, purchased, or leased capital assets by providers using STIF Formula fund and/or STIF Discretionary/Intercommunity funds. This capital asset reporting will be completed through the APR to fulfill the STIF requirements. ODOT will enter the STIF capital assets in OPTIS prior to beginning the APR.

The STIF capital assets for STIF Formula and STIF Discretionary/Intercommunity will then be populated when the provider begins the APR.

ANNUAL REPORTING

SPR Annual Reporting Outcomes

The following access to public transportation outcomes must be reported in the SPR as **part of the 4th quarter** SPR of each year: number of people within a half mile of transit stop, number of Low-Income Households within a half mile of transit stop, number of students in grades 9-12 attending a school served by transit, and number of rides provided to students in grades 9-12 served by fixed route services.

The method for calculating access to transit outcomes, as list above, may vary. QEs should use the same method for reporting as was used to estimate outcomes in the STIF Plan. Methods may have included using transportation tools, such as Remix or TNexT. QEs also may have used U.S. Census data to calculate the number of low-income households within a given geographic area. See the [STIF Methods for Calculating Low-Income Households](#) guidance document for more information.

The method may vary for calculating the number of rides provided to students in grades 9-12, depending on the type of service provided and other factors. The provider should use the most accurate method for counting student ridership such as onboard ridership survey, passenger counts, and requesting age/grade information when scheduling rides.

Figure 4. Annual Outcome Measures

The screenshot shows the OPTIS system interface for reporting annual measures. At the top, the header reads 'OPTIS' and 'Close'. Below the header, the main title is '4. Annual Measures'. Underneath, it says 'Item 1.1' and 'Number: SPR-19-0502-02'. On the right side, it displays 'Control #: 10095225'. A navigation bar contains five buttons: 'Skip', 'Back', 'Save', 'Next', and 'Finish'. A sidebar on the left lists four menu items: '1. Task Information', '2. Other Funds', '3. Outcome Measures', and '4. Annual Measures', with '4. Annual Measures' being the active selection. The main content area is titled 'Annual Measures' and includes a help icon and the text: '? These measures are required at the end of each fiscal year (4th & 8th quarters)'. Below this, there are three rows of data entry fields, each with a label and a text input box: '# of People within a Half Mile of Transit Stop', '# of Low-Income Households within a Half Mile of Transit Stop', and '# of Students In Grades 9-12 Attending a School Served by Transit'. At the bottom left, there is a note: '* Indicates a required field'. At the bottom right, there is a 'Top' button.

SPR Annual Reporting Program Criteria

The following program criteria must be reported in the SPR as part of the 4th quarter of each year. ODOT staff has developed guidance below to assist in reporting program criteria for the following: increased frequency to areas with high-percentage of low income households, expanded routes or services to areas with high percentage of low-income households, reduced fares in communities with high percentage of low-income households, procurements of low-or no-emission buses for use in areas with population of 200,000 or more, improved frequency and reliability of service between communities in and out of QE's service area, improved coordination among PTSPs to reduce fragmentation of service, and implementation of programs to provide student transit service for students in grades 9-12.

The method for reporting each program criterion is to review the percentage allocated in the STIF Plan and enter the same percentage as the STIF Plan allocates, unless there has been a variance. If the percentage has changed, enter the updated percentage and explain in the available text box why the change occurred. If there is STIF match for the procurement of low-or no-emission buses for use in areas with population of 200,000 or more, then the QE will need to update the percentage with what is attributable to STIF funding.

Annual Reporting Outside of the SPR

The reporting requirements include three additional documents that must be submitted on an annual basis: report on mitigating the impact of the tax on low-income passengers, QE budget, and audit reports. Instructions on how to submit these three documents to ODOT will be provided online and as part of ODOT's upcoming grant management training in July 2019.

Annual STIF Low-Income Tax Mitigation Reports

The annual low-income reporting requirements are required by statute and the details are outlined in OAR 732-040-0025(1). The report must consist of actions taken by any PTSP located within the area of the QE to mitigate the impact of the STIF tax on passengers who reside in low-income communities.

PTSPs will submit reports to their relevant QE and the QE will bundle the low-income reports from applicable PTSPs for submittal to ODOT. The QE will include reports from PTSPs located within their area of responsibility that receive STIF discretionary funds, even if they do not receive STIF formula funds.

The report must also explain how the QE defines and identifies passengers in low-income communities. The method used must be consistent with the definition of Low-Income Households from the QEs STIF Plan. This report will provide information on the overall dollars spent in improving and expanding transportation services to Low-Income Households. OAR 732-40-0005(17) defines Low-Income Households as those below 200% the federal poverty guidelines. This report is due as **part of the 4th quarter** SPR reporting and can be attached to the SPR in OPTIS.

Annual QE Budget

In accordance with the budget reporting requirements specified in statute and OAR 732-040-0025(2), a copy of the QE's adopted annual budget for the upcoming fiscal year must be submitted to ODOT. The deadline for ODOT receipt of each QEs' budgets is no later than 30 days after adoption.

Annual Audit Reports

Per the audit requirements articulated in statute and described in detail in OAR 732-040-0025(3), a QE or any PTSP located within the QE's area of responsibility must submit the results of any relevant financial audit, as required by a local, state, or federal oversight agency for the purposes of statewide reporting. ODOT is requesting submittal of any required local, state, federal, or any voluntarily submitted audits. This includes a) the state financial report required under ORS 291.040, b) the results of any comprehensive review completed by the Federal Transit Administration of the Agency; and c) any information submitted by the QE, and their PTSPs, as part of the

requirements of a statewide audit in accordance with the federal Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996. A QE is not expected to audit their PTSPs. The QE's role is limited to compliance oversight.

Per the audit requirements articulated in statute and described in detail in OAR 732-040-0015(1), recipients shall conduct an annual financial audit of the STIF moneys received. See the STIF Agreed-Upon Audit Procedures for a list of audit items that must be included in STIF recipients annual audits. All financial audit reports shall be submitted to ODOT no later than 30 days after the receipt of the auditor's final report(s) per OAR 732-040-0015(2).

STIF DISCRETIONARY/INTERCOMMUNITY REPORTING

The STIF Discretionary/Intercommunity reporting requirements are currently being developed by ODOT staff. The reporting requirements will be explicit in the grant agreements. ODOT is exploring options for modifying the existing APR or SPR for reporting purposes. The report template will allow PTSPs to report on STIF Discretionary/Intercommunity funded projects directly to ODOT.

**EXHIBIT D
CONTRACTOR'S PROPOSAL**



MTRWESTERN RESPONSE TO CLACKAMAS COUNTY
REQUEST FOR PROPOSAL #2020-83
SHUTTLE OPERATIONS SERVICES

PROPOSAL

SUBMITTED:
JANUARY 14TH, 2021



Amanda Emery; Vice President of Sales

206.838.8138

amandae@mtrwestern.com

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SECTION 5.2

MTRWestern is a locally owned Pacific Northwest based Transportation Company, with locations in Seattle, Spokane, Washington, Portland, and Eugene Oregon. In addition, MTR operates transit services in St Helens Oregon for Columbia County, as well as the City of Corvallis in Corvallis Oregon. Since 2003, MTR has provided transportation services to businesses and organizations along the West Coast. The business initially offered charter services, from Los Angeles and San Francisco to Vancouver, B.C. and Calgary, Alberta. When the company was purchased by H.S. Wright in 2011, he saw an opportunity for MTR to grow deeper roots in the Pacific Northwest and expand its offerings beyond charter to ensure lasting sustainability and to focus its priority geographic areas to the states of Oregon and Washington.

MTR also expanded its product line to include schedule services, outsourced operations for public transit, campus transport for universities and hospitals, and last-mile services for businesses and transit authorities. We also collaborate with companies and public agencies to fill in gaps in transit networks, offering point-to-point and multi-point services and commute solutions that benefit urban and suburban communities, similar to this RFP for Clackamas County. Over the past 10 years, our business has continued to grow steadily because of strong results and customer referrals. We are now the largest private bus operator in the Pacific Northwest. In which many of our clients prefer working with MTR over the larger national operators as we have local roots, understand the day to day challenges that can accrue, yet we are large enough to provide the efficacies of that of a national operator. Our holding company, Seattle Hospitality Group has connections and business affiliations that we work to the advantage of our clients. The Wright family hospitality assets in transportation, hotels, iconic landmarks, events and meeting planning are a powerful force, not only in the Northwest, but across the country and around the world. Across the portfolio, the Wright family name has become synonymous with excellence – excellent service, strong business partnerships, and a commitment to the communities it serves.

Embracing this service mindset, MTR hires the best people in the industry – people with talent, integrity and a commitment to building quality relationships and delivering meaningful results. In addition to being experts in transportation planning, operations management, marketing and service delivery, our people are engaged partners who sincerely care about our clients and their success. If selected as the operator for Clackamas County, we will work seamlessly, as an extension of your team, with full accountability and responsibility to deliver strong results and exceed your expectations across all staged of planning, implementation, operations management, monitoring and reporting.

Based on our prior experience operating both public and private shuttle services with similar objectives, our qualified team is fully prepared to operate shuttle services for Clackamas County. We are confident in our team, service and product; ready to bring our full strength to operate successfully in 2021 and beyond. Our operating plan is contained in the following proposal along with our ***ability to meet the requirements in Section 3 of the RFP outlined within the Scope of Work (Section 5.3 of the proposal)***. This plan follows MTRWestern's guiding principles and philosophy in that service quality need not compromise a direct relation to operating cost. To the contrary, it is created from a strong work environment that supports proactive employee relations and professional development.

EXPERIENCE

Service excellence requires a commitment from management. MTR has built a safety and service culture, which starts with the guidance of our leadership team and extends through management to every employee. The corporate management team described below will play an important role in managing and guiding the delivery of service through our key staff.

Experienced Personnel

JEREMY BUTZLAFF, President, came to MTRWestern after several years working in the motor coach industry. Previously, he was general manager at Gray Line and Holland America, where he managed operations for large coach fleets. Since joining MTR in 2011, Jeremy has helped grow the company into one of the largest transportation operators in the Northwest, providing shuttle operations, commuter services, event and VIP transportation for many of the region's leading organizations.

Jeremy is responsible for overseeing all aspects of the business through management of the following departments and individuals. Jeremy is also responsible for communicating on behalf of the company to the ownership group, board members, any government and public entities. He helps to direct and lead the organization in both short and long term goals.

ALICIA REINHARD, VP of Operations & Maintenance, started her career at Seattle Hospitality as a transportation coordinator for large-scale corporate events and meetings. She brings skills in operational planning, time management, analytics and strategic communication that complements our approach now and in the future. A former professional basketball player, Alicia combines her strategic nature with a team-focused leadership style, which propels our operations team forward.

Alicia was hired at MTR in June of 2007. Alicia oversees all aspects of the organization for both operations and vehicle maintenance. Her duties consist of overseeing the day-to-day operations as well as the Station Managers and Maintenance Department at each of our six locations to ensure process and procedures are being followed, that we're in compliance with both federal and state regulations, she supports implementation of operational strategies, and performance to proactively identify efficiency issues and propose solutions.

AMANDA EMERY, VP of Sales, started her career at MTR in 2007. She loves the challenge of working with clients with diverse needs, each requiring a personalized solution. A self-proclaimed transportation geek, Amanda has been crucial to the success of the MTR clients and truly cares about the impact she has on their business.

Amanda is responsible to driving and forecasting MTR revenue along with determining additional lines of service that fit within the MTR model, to ensure that MTR is the right fit for incoming customers through similar organizational culture, mission, and values. It is her goal to ensure that we are complementing and providing genuine strength to all the MTR customers.

JULIE LOVEJOY, Chief Financial Officer & Human Resource, Julie joined the MTR team in April of 2020 at the peak of COVID-19. Due to Julie's hard work, and over 20 years of experience, in both the financial and HR industry, she was able to help restructure the organization, to ensure its longevity and sustainability, resulting in an overall extremely financially and culturally healthy organization. Julie has worked in both the private, public, and non-profit sectors.

Julie is responsible for managing the organizations finance along with financial reporting to the ownership group, bank, board, and management team. Julie helps to assess financial opportunities, along with creating economies of scale, and overall efficacies resulting in benefits to our clients, employees, and communities. Julie also oversees the HR department providing strategic staffing plans, compensation, benefits, training and development, labor regulations, and all state and federal compliance.

DOUG PARK, Safety Manager, started at MTR as a driver in 2012. Doug's years of driving experience, along with his passion for safety, was quickly seen through our driver safety monitoring. He was promoted to a driver trainer role and responsible to training new hires, retraining, and in field supervisor. Through his years of training and working alongside the previous Corporate Safety Manger, when the time came Doug was able to naturally step into his current role. He has enhanced an already strong Safety Culture ensuring compliance with OSHA, DOT, and all local, state, and federal regulations.

Doug is responsible for collaborating with management to uphold and further develop, prepare, and implement safety policies and procedures. Doug conducts safety inspections, driver monitoring, retraining, safety education, and oversight to employee compliance, along with reviewing incidents and accident reports. He oversees driver trainers responsible for new hire training.

COLIN CARNEY, Operations Manager Portland, has worked in the transportation industry for over 20 years. He started with Gray Line of Alaska as a driver and quickly developed into an Operations Manager, responsible for managing over 75 drivers and 50 pieces of equipment at one time. Once Colin moved to the Pacific Northwest, he was hired by MTR and has been a tremendous asset to the organization. Colin is our number one driver advocate, working to ensure drivers have the resources they need to be successful resulting in strong driver moral and customer service results.

Colin is responsible for overseeing the day-to-day operations in our Portland based facility. He works to implement processes along with upholding best practices with dispatch, maintenance, safety, driver training, and wash crew. Colin will manage the Clackamas County services and work closely with up to three dispatchers to ensure driver assignments, on time performance, as well as incoming phone calls from the public. Colin will also work alongside the VP of Maintenance to ensure the Fleet Manager, located at our full maintenance facility in Portland, is meeting the expectations of the contract.

Operational Experience

We have reviewed the requirements and expectation of the Clackamas County service and we are confident that our team is more than capable of providing the full range of service requested in the RFP.

As mentioned previously, in 2011 MTR saw the opportunity to expand the company's shuttle and transit services through investment and acquisition. In 2012, we grew our footprint in the greater Eugene area, assuming management of a 20-year relationship and intercity transit services with the **Oregon Department of Transportation**, which led to us becoming part of the Amtrak Cascade system, which connects 18 cities in the Pacific Northwest. This endeavor propelled us into further public and private contracts.

We have continued to expand our shuttle and transit operations in all markets, through strong results, and customer referrals. We offer a range of services including scheduled services, on-demand and first/last miles transportation, commuter and campus solutions, and outsourced operations for the

businesses. Over the past decade, we have won and/or operated several transit contracts including a just a few listed below:

- Since **July of 2016** MTR has been managing transit operations for **Columbia County Rider**, based in St. Helens, Oregon. The program includes fixed route services, 7 days a week, flex/deviated-route services, and demand response services that includes ADA Paratransit, Medicaid transportation and general public Dial-A-Ride. MTR employs and manages 13 drivers along with overseeing the vehicle maintenance of 15 vehicles, coach cleaning, both state and federal reporting, fare reconciliation, and responsible for managing the public phone and email inquiries.
- In **June 2018**, MTR was awarded the contract for the **City of Corvallis**, and took over the operation from First Transit for the fixed-route transit services for the Corvallis Transit System in Corvallis, Oregon. The current transit service operates approximately 40,000 annual revenue hours and over 500,000 revenue miles per year. Service operates 7 days a week on a fixed route schedule. We currently oversee the management of 32 employees both, administration, drivers, and a safety manager along with management maintenance for 17 vehicles. We are responsible for the management of coach cleaning, onsite fueling, and overseeing the public phone and email inquiries. Since taking over the contract the City of Corvallis has seen great improvements in their offerings such as higher driver moral, overall company culture and driver retention, increase in on time performance, and reduced service interruptions.
- Management of the **Columbia Gorge Express** transit service from Gateway Transit in Portland to Multnomah Falls and Hood River began **May of 2015**. The service operates between cities and attractions along the Columbia River with 3 ODOT owned vehicles and 2 MTR owned vehicles. MTR insurances and maintains along with overseeing a phone line and calls from the public.
- Mult-year contract operations for **Explore Washington Park (EWP) TMA**, in collaboration with ODOT to provide fixed first/last mile shuttle services throughout Washington Park to the public year round began in **March of 2015**. Service varies throughout the seasons operating up to six vehicles and management of up to 10 drivers at one time. MTR works closely with EWP to ensure the drivers feel like an extension of their team, representing their mission statement, over all values, and outstanding customer service.

OVERALL APPROACH & ABILITY TO MEET REQUIREMENTS

MTRWestern's vision is to transform the way people move. We believe that transportation services operated thoughtfully and effectively, can impact more than mobility; it can influence local economies, increase productivity of individuals and businesses and amplify the value the public places on community services. If awarded the Clackamas County contract, MTR will work in partnership with the County to provide the employees and community with a high quality, safe, effective, and efficient transit service that supports the county goals, and encourages increased confidence in overall service.

As captured throughout this proposal, MTR is not a standard transit operator. Since 2003, MTR has earned a reputation as one of the leading transportation operators in the Pacific Northwest. We are a leader not only because we provide vital and valuable transit and shuttle experience to the county, but also because

we do things differently. We hold ourselves to the highest standards of safety and service; operate with attention to detail and an eye on results. We believe in building and nurturing strong partnerships with our clients, employees, and the communities we serve. We believe all of these factors are the recipe for success, as evidenced by the following principles:

OUR VISION

To transform the way people move.

OUR MISSION

To be the best-in-class transportation solutions provider. We value our clients, and we maintain the highest level of innovation, professionalism, safety and performance to support their business goals each and every day.

OUR VALUES

Our team shares a common set of values that reinforce our mission and vision and set us apart from other operators. These values reinforce what makes us great:

- Uncompromised safety standards
- Outstanding service
- Supportive and inclusive team and work culture
- High performance standards with accountability for results
- Actively enriching the communities where we live and work

SafetyFirst

Each year, MTR transports over 3.5 million passengers, while maintaining a top-safety record with the Department of Defense, Transportation Securities Exchange, Utility and Transportation Commission and the Federal Motor Carrier Safety Administration (FMCSA). Safety is a fundamental priority for us, and we invest considerably in proactive safety and compliance management and monitoring.

To ensure potentially negative practices are addressed and corrected before they become issues, MTR's Safety and Compliance Directors assist local Station Managers in continual monitoring of compliance and driver performance.

DriveCam technology is placed on every vehicle, which allows us to regularly evaluate whether drivers are utilizing seatbelts, or if they are driving unsafely at any time. In the event that our review of the footage indicates non-compliance with laws or MTR's policies, we will coach them, provide progressive discipline (if necessary) and/or remove them from service, depending on the offense and its severity. We track all speeding and safety incidents, and hold drivers accountable for improvement, or we remove them from the roster.

Our safety culture is integrated into every aspect of the services we provide. Our clients and their passengers place their trust in us, and we are committed to doing everything possible to keep them safe. Our Corporate Safety Team manages and monitors our safety performance and the training and retraining efforts needed to ensure our drivers make safety their top priority.

Our Great Culture Makes the Difference.

MTR's exceptional culture enables us to attract the highest quality drivers and staff in the industry. We value our people and treat them well through management excellence, and provide a culture and environment in which team members can thrive. We believe that a culture in which we take care of our own will lead to greater service to our clients and their guests. That means celebrating successes, and creating work environments where team members feel safe to share fresh ideas that have the potential to make our operation even stronger.

Excellent Service

We know that our performance matters, and we work not just to do our job well, but we also look for ways to improve our service and increase rider satisfaction. We have learned that making small adjustments to appearance standards, training and other operational protocols can have a significant impact on driver morale and performance. We invest in service training, and make service performance a key indicator of driver success by providing incentives to drivers with no service incidents.

This service mindset is deeply rooted in our organization and starts at the top. As mentioned MTR is part of the Wright family hospitality assets in transportation, hotels, iconic landmarks, such as the Space Needle, events and meeting planning which are a powerful force, not only in the Northwest, but across the country and around the world. Across the portfolio, the Wright family name has become synonymous with excellence – excellent service, strong business partnerships, and a commitment to the communities it serves. Each member of our team strives each and every day to maintain and elevate that service bar.

Quality Control

Quality starts with tone at the top. Our owner, president and executive team plays an active role in the deployment of our services and provides the day-to-day support to our field leadership in order to ensure they have the resources they need to manage their teams to effective results.

A cross-organizational Quality Control Team made up of our VP of Operations, Corporate Safety Manager, VP of Sales, and our Operational leadership in each market and for each major program, such as the Clackamas County operation, meets bi-weekly, every month on enterprise-level quality control measures. The group also works to sets standards, monitor quality control practices, builds on proven practices in shuttle and transit solutions, and ensures consistent quality service across all areas.

Our Vice President of Operations empowers the local teams to target program results, and then evaluates the data on a regular basis to assess how we are doing. One of the great benefits of having real data from a number of sources is that it provides an opportunity for deeper analytics to ensure that the data does its work.

Responsive Communication

Our operations team will work collaboratively with the Clackamas County, acting as the glue between all aspects of the operation, to ensure we have adequate staffing to manage and monitor all services, technology requirements and provide timely data and analytics, as the basis for improvement.

Environmental Sensitivity

At MTR, we are always looking for new, innovative and sustainable ways to operate services. Our approach to sustainability has garnered attention in the industry, and ultimately lead to MTR being awarded the 2019 Leadership & Environmental Sustainability Award, formerly known as the Green Spirit Award. The award, provided by the American Bus Association (ABA) and is sponsored by Motor Coach Industries (MCI), was created to promote the motor coach and its application as a viable solution to the reduction of carbon emissions, and to encourage industry leadership with a positive impact on our environment. The award is presented to a motor coach operator who demonstrates the greatest commitment to “environmental leadership” in the areas of internal corporate initiative, external corporate stewardship or community and industry-wide environmental leadership.

MTR continues to seek out partnership where electric vehicles could be made possible in the coming years.

Insurance

All insurance requires stated in the proposal have been accounted in the total pricing provided. If awarded the contract MTR will provide Clackamas County will all documentation required prior to the start of service.

SECTION 5.3

SCHEDULEING & DISPATCHING

Through our expensive experience working with both public and private transit/shuttle services we understand what it takes in order to schedule and dispatch driver and vehicles accurately (please refer to the EXPERIENCE section on Page 4).

In relation to our experience and approach to scheduling, we rely on both “old-school” scheduling techniques and scheduling software through Coach Manager. We have learned that scheduling software is a great tool to get the job done, but it does not replace the scheduler/dispatcher; it only assists in performing the functions of his/her job better. The dispatcher or scheduler needs to understand all aspects of the operation and have a clear goal when creating the schedule. For example, in similar transit operations we have a set amount of hours each day to schedule demand-response service. As a result our team is highly efficient in meeting the demand response service through our strategic scheduling.

Our approach to scheduling is to educate and empower our dispatchers. We observe their work and work with them to evaluate the service they provide at the end of each day. We work closely with dispatchers to identify inefficiencies in the schedule. This is not only educational, but helps the dispatchers to explore how to improve.

Lastly, we work directly with our demand-response riders and we communicate with them openly and transparently. We train our dispatchers to communicate with riders accurately, whether sharing how to navigate the system, offering insight into the services we provide, or evaluating options. We give our riders choices instead of directing them what to do.

Staffing & Key Personnel

Our experience operating similar services allows us the ability to clearly define the roles and responsibilities of our staff. The below outlines information regarding the staff responsible for operating the providing the service. As previously noted the MTR leadership team will play a key role in providing oversight, support, and management of the below employees and available to Clackamas County whenever needed.

Station Manager, Colin Carney will be the main point of contact for Clackamas County and will be on call during all hours of operations. Colin's primary responsibility will be to ensure that all items associated with the Scope of Work are met with full transparency and communication to Clackamas County. He will oversee all aspects of the agreement to ensure that we are in compliance and meeting/exceeding the expectations in the Scope of Work.

As service launches, our Operations team will be heavily involved with field supervision and driver support. All changes, updates and concerns will be directed through the communication of Colin and Clackamas County to provide consistency. As the Station Manager, Colin will be responsible for managing and overseeing, dispatchers, fleet manager, drivers, and wash crew. Colin will also be responsible for the following:

- Working directly with HR & Safety regarding driver hiring.
- Ensuring driver-adherence to the designed routes through spot checks, ride-alongs, and stop monitoring.
- Accurate operator log-on and start up
- Operationally responsible for any patterned issues and adjustments/re-training.
- Dispute resolution for all escalated issues from Dispatch and/or Safety.
- Monitoring and reviewing daily system performance and quality assurance functions for service operations
- In field supervision
- Driver discipline
- Approving driver hours and vacation time
- Customer relations point of contact
- Coordinating with Clackamas to address service issues and improvements
- Communicating and reporting any emergencies or service failures directly to Clackamas and submitting service failure reports
- Overseeing accident reports and/or incidents and debriefs.
- Emergency services point of contact for any maintenance or vehicle issues.
- Understanding of data management and analysis
- Submitting and reviewing required ridership, maintenance logs, and/or data reports to Clackamas County.
- In depth understanding of on-time performance through baseline monitoring of Samsara, as well as working alongside dispatch and technology interface.
- Monitoring drivers speeds and safe driving through Samsara
- Response to and reporting of customer issues and/or responses
- Billing/Invoicing

Dispatcher(s) duties will be split between three current dispatch employees based on hours of service. Two of the dispatchers will be primary while the other is fully trained as a back up to the service in the event of vacation or sick leave. Each dispatcher will be fully trained as an extension of Clackamas County, ensuring they have full knowledge of the County services in order to provide route deviation and referral questions. The Dispatchers will be responsible for the following:

- Assign drivers and vehicles to fill daily service schedule
- Confirm assigned work with each of the drivers each day to ensure there are no misses.
- Answering any questions the drivers may have about the service
- Fielding feedback from the drivers to the Station Manager on a daily basis
- Check in drivers who report for service
- In field supervision
- Working with the drivers and maintenance department in the event of a mechanical issue
- Answering customer service phone calls and emails
- Monitoring technology and applications to ensure they are working properly
- Filling out and submitting Incident Reports
- Monitoring drives and vehicles through Samsara technology

Maintenance Manager, will oversee all maintenance for Clackamas County vehicles and work alongside both the VP of Maintenance, Safety, and Station Manager to ensure compliance in both FTA/FMCSA, as well as local and state, and MTR Maintenance Plan and standards are met. Our preventative maintenance program ensures all manufacture maintenance schedules are met through our internal RTA/Samsara software in which the Maintenance Manger will utilize in order to provide consistent reporting and manage all maintenance services. The Maintenance manager will also be responsible for the following:

- Ensure all vehicles and equipment up-to-date, properly maintained and in compliance
- Personnel training and certifications
- Fleet maintenance, including Preventive Maintenance Schedules
- Both Fleet and Facility Inspections
- Fleet parts/warranties
- On board communications and security equipment maintenance
- Support independent third-party maintenance auditors
- Vehicle inspections

Drivers, assigned to Clackamas County will dedicate to this service to ensure over all consistency of service. In order to operate the Oregon City & Clackamas Industrial routes a total of 5 driver will be needed, of the 5, 3 drivers operating as the primary and 2 as back up during vacations, sick days, and/or training/retraining. Once operations for Clackamas Community College begin, we project 3 to 4 dedicated drivers will be needed along with two back up.

Part of the benefit in working with MTR is that we currently have a large driver pool in which we can pull from in the event that there are special event services and can also respond quickly in the event additional services are needed.

Wages and Benefits. Although our culture is what keeps our drivers long-term, wage is also highly important. Over the years, we have made it a priority to evaluate our driver wage to ensure that we are offering a competitive wage. Unlike most operators, we also offer and schedule our drivers to ensure that they can have full benefits package, including medical, dental and vision, to our drivers. The MTR benefits package is available to Clackamas County upon request.

Facilities & Vehicle Storage

MTR currently leases a full facility in Portland, Oregon located at 8101 NE 11th Ave. The office space holds five primary offices, one for the Station Manager, one for the dispatchers, both of which have private offices for interviewing new drivers, performance reviews, and progressive discipline. The other offices are used for interviewing, driver training, and safety trainings. The space also has dedicated space for a driver break room and lounge area.

If awarded the Clackamas County Service, MTR will utilize this space as the primary location for the office space for the Station Manager, dispatch, maintenance/shop, full washing on a bi-weekly basis, driver training, and postings for all federal and state mandates.

MTR would like to request a restroom available to the drivers in Clackamas. We would operate the service out of the Portland location; however have the drivers report each day to the designated parking facility provided by the County. Vehicles would be driven to the Portland location when maintenance and/or washing/cleaning is required. We have extensive experience operating services this way with little to no service interruptions for large corporations such as Intel in Hillsboro Oregon.

Technology

Our Operations and Safety teams will monitor program performance on a daily basis. Clackamas County may also have direct access to select performance dashboards, as desired, and we will also provide your team with regular reports on ridership, schedule adherence, events or incidents, maintenance, and any other custom reports as desired by Clackamas County and in concordance with the contract.

We also use the technology, monitoring the performance in the field to gather information and serve as both a training and feedback tool, as one more way to proactively engage and monitor driver performance. Some of our monitoring technologies include:

- **Samsara/GPS:** Samsara telematics platform provides the necessary components to deliver solutions ranging from maintenance, to track and trace software, helps manage fuel efficiencies, and driver safety such as speed reports. This platform keeps our fleet and managers connected to each other in one program through a patented Electronic Verified Inspection Report (EVIR®) system allowing drivers to conduct pre-and post-trip inspections to the 2020®-mobile communications tablet. Other features include a Ground Traffic Control (GTC) fleet tracking software, and an electronic logging device (ELD) allowing the driver and company to have up to the minute “hours of service” updates. This helps with business efficiency and complies with federal regulations, and enables a paperless system.

- **RTA Fleet Maintenance Software:** monitors the maintenance and health of every Clackamas County vehicle in a centralized way, to help our maintenance staff proactively manage routine maintenance schedules, rhythms, warranty's, and parts ordering.
- **Radio's:** Each vehicle will be equipped with a two-way radio connected back to the dispatch office to provide direct communication between drivers and operations. We have found in operating a transit service Radio's are the most effective as it allows for direct communication in the event of an emergency and/or route deviation.
- **Coach Manager:** is the primary software utilized to dispatch driver and vehicles each day. The Station Manager and Dispatchers use Coach Manager to notify drivers of the daily assignments along with their work tickets. All invoices are generated through Coach Manager.

Driver Hiring:

As mentioned previously, when MTR enters into a contract it is important that we see ourselves as an extension of the organization we are working with. We train each of the employees to know full knowledge of service.

We believe that our drivers are one of the most important aspect of any transit service. They are the face of the organization in the communities daily representing both MTR and most importantly our clients brand and reputation. Because of this we take great steps to ensure we hire the best in class drivers. More on our driver program below:

Driver Eligibility:

- All drivers must have a Commercial Drivers License (CDL) or be in compliance with state and federal laws for the class of vehicle they operate (no Mexican Commercial Licenses.), Class B with passenger and air brake endorsements.
- All drivers must have at least two years of verifiable professional driving experience.
- All drivers must be in good physical condition. Evidence of insurability must be provided for any driver that has continuing health problems, requires regular medication or is over the age of 65.

Hiring: Driver that applies must go through a background ground check for the following:

- Trace of social security
- Criminal country back ground check as well as jurisdiction
- Criminal federal search for each state lived in
- National wide sexual offender
- Drug & Alcohol testing following both State and Federal Regulations. Any positive results the applicant will not be hired by MTR.

Unacceptable Drivers for Hire:

- Drivers with unverifiable MVRs
- Drivers with any major violations* in the past 36 months
- Drivers with more than two at-fault accidents in the past 36 months

- Drivers with more than four minor violations. Including Major violations are defined as DUI/DWI, License Suspension, Felonies, Hit and Run Accidents.
- Drivers under the age of 23
- Possession of a Controlled Substance, Eluding Police or Reckless Operation.

All applicants must go through an in-person interview with the Station and Safety Manager along with a driver/ride along test in an MTR vehicles. If the driver is deemed fit and had past all of the above they will be hired and go through the MTR Training process where there will be continual evaluation until fully cleared to go into service.

MTR will notify Clackamas County of new or terminated employees on a monthly basis.

Driver Training:

We continuously enhance our driver orientation, policies and training programs. Each new hire is put through an intensive training and orientation program designed to address the specifics of safety, services, operations and customer service. This program is conducted by our Safety and Training Department and covers defensive driving, emergency situations, passenger sensitivity, customer service, and knowledge of the operators' responsibilities under the Americans with Disabilities Act (ADA), including use of accessible equipment such as lifts and wheelchair tie-downs, sexual harassment, and diversity and inclusion.

When hired, our drivers go through at least 100 hours of training based on knowledge and skill level, both in classroom setting and behind the wheel, before they start to drive in service. We make sure they are familiar with the different services offered, the geography and particularities of the service area and company communications. Our drivers receive this training when first hired, and through monthly safety training courses. All drivers are provided with a driver handbook, which outlines policies and procedures that are reviewed and taught during their training.

MTR Driver Training Guide can be made available upon Clackamas County's request. Additional driver training and safety can be found under the SAFETY Section of the proposal.

ADA

We at MTR take great pride how we treat each one of our guests, driver training, as mentioned above, covers ADA wheelchair lifts. As part of the driver training they are also required to go through an ADA training which covers:

- The American with Disabilities Act (ADA)
- Why we must comply with the motor coach ADA Rules
- Good customer service delivery to customers with disabilities
- Communicating with and assisting customers with disabilities
- Operation and maintenance of accessibility equipment
- Manual boarding of customers who use wheelchairs another mobility aids.

The ADA Training Module can be provided to Clackamas County upon request.

FEDERAL & STATE REQUIREMENTS

MTR drivers, supervisors and safety sensitive held positions are trained and certified on the Americans with Disabilities Act upon hire and bi-annually. Our drivers participate in a 60 minute minimum training on physical, behavioral, speech and performance indicators of drug abuse as well as alcohol abuse. Our Drug & Alcohol policy complies with FMCSA and FTA requirements in random testing as well as our internal reasonable suspicion policy. Drug and alcohol testing is preformed upon pre-employment, random (50% annually Drugs and 10% annually Alcohol), post-accident, reasonable suspicion, return to duty and follow-up. In the event of a positive test result we comply with referral to SAP. At MTR we are certified enrolled with JJ Keller to provide D&A testing and reporting to meet all requirements under CFR49 Part 40 and 49 Part 655.

SAFETY

As mentioned previously, MTR places the utmost priority on the safety and security of our passengers. Annually, we perform over 25,000 trips, and we drive in excess of 3 million miles. We have been certified as Satisfactory by the Department of Defense, Transportation Securities Exchange, Utility and Transportation Commission and the Federal Motor Carrier Safety Administration (FMCSA). In addition to having the top FMCSA safety rating possible, MTR also has an enviable history of safe vehicle and driver operations based on its roadside performance over the last 24 months as measured by the FMCSA's Carrier Profile on the Safer System. Similarly, MTRW's drivers have been inspected a total of thirty times over the past twenty-four months with no out-of-service violations for an out-of-service rate of 0% which compares very favorably to the national average of 5.5%.

More on FMCSA: We continually grade ourselves by reviewing our Compliance Safety Accountability (CSA) scores through the FMCSA that holds motor carriers and drivers accountable for their role in safety. These scores can be viewed online in FMCSA's Safety Measurement System (SMS). FMCSA updates the SMS monthly with data from roadside inspections, including driver and vehicle violations; crash reports from the last two years; and investigation results. The SMS considers:

- The number of safety violations and inspections
- The severity of safety violations or crashes
- When the safety violations occurred, with recent events weighted more heavily
- The number of trucks/buses a carrier operates and the number of vehicle miles traveled
- Acute and critical violations found during investigations
- FMCSA organizes the SMS data into seven Behavior Analysis and Safety Improvement Categories (BASICS):
 - Unsafe driving speeding, reckless driving, improper lane change, inattention, no seatbelts
 - Crash indicator histories of crash involvement (Not Public)
 - Hours-of-service compliance/noncompliance with HOS regulations, including logbooks
 - Vehicle maintenance brakes, lights, defects, failure to make required repairs
 - Controlled substances/alcohol use/possession of controlled substances/alcohol
 - Hazardous materials compliance leaking containers improper packaging and/or placarding (Not Public)
 - Driver fitness invalid license, medically unfit to operate a CMV

The SMS groups compares via BASIC with other carriers that have a similar number of safety events (e.g. crashes, inspections, or violations) and then ranks carriers and assigns a percentile from 0 to 100 (the higher the percentile, the worse the performance) to prioritize them for interventions.

Monthly we review our CSA scores with our driver during our safety meeting to show how we stack up against companies within our rating group, constantly looking for ways to improve. Our company is always below the national average in every category and is in the top 5% in each category of companies within our group.

Beyond FMCSA: MTR utilizes an industry-leading training curriculum for all new operators entering into our company. Our safety and operations staff is responsible for the development of best-in-class operator-training programs exceeding most transportation companies, and are constantly searching for ways to improve and innovate new processes.

Our entire employee-training program is centered on safety. Drivers are trained and continually re-trained on classroom, pre-driving skills, behind-the-wheel training (BTW), observation and annual skills and knowledge.

The Company Resource Vault (CRV) is MTR's communication and online training program for all employees. All departments can communicate with each other or get information on a variety of company topics, training, and policies. The CRV contains:

- Inter-company communication
- Links to educational and health websites
- Policies and procedures
- Upcoming events and safety tips
- Educational and compliance sites
- Training and testing
- PowerPoint and video presentations
- Forms and certifications
- Links to company webinars

DriveCam Vehicle Monitoring: MTR currently utilizes DriveCam in all vehicles. Based on the information in the RFP, the County will provide camera's for monitoring in the vehicles. We utilize cameras as a behavior-based safety tool focused on a comprehensive solution identifying and prioritizing positive and negative behaviors. This allows us to recognize and reward positive actions, while correcting the causes of poor driving before they lead to a collision. This "programmatic approach" helps our company transform our safety culture and ensures bottom line results, preventing collisions, fraudulent claims and wasted operating expenses while protecting our drivers and our brand.

Samsara Systems: As mentioned previously we utilize Samsara telematics platform to provide the necessary components to deliver solutions ranging from maintenance to track and trace software and helps manage fuel efficiencies. This platform keeps our fleet and managers connected to each other in one program through a patented Electronic Verified Inspection Report (EVIR®) system allowing drivers to conduct pre-and post-trip inspections to the 2020®-mobile communications tablet. Other features include a Ground Traffic Control (GTC) fleet tracking software, and an electronic logging device (ELD) allowing the driver and company to have up to the minute “hours of service” updates. This helps with business efficiency and complies with federal regulations, and enables a paperless system.

Handling of Emergencies

Safety of our riders, employees, and community are the highest priority of our organization. In the event of either a collision, injury, or an incident, there must be an operating procedure for reporting these events to the necessary organizational personnel. The goal is to manage the consequences of these events and to assure that affected parties’ concerns are addressed in a timely and uniform manner, immediate as possible.

In the event of a collisions, injuries, or incidents must be reported to the Station Managers immediately. At which time the Station Manager will notify Clackamas County. Collision, Injury, or Incident reports are to be completed and submitted to Station Manager immediately or by the end of your work shift, depending on severity. The Collision, Injury, or Incident Report forms are located on each vehicle.

An interview will be conducted with the Station & Safety Manager with the intent to collect further information about the event as well as determine the corrective action that should be taken in order to any future potential collisions, injuries, or incidents. All drivers are removed from service after a collision until the collision, debriefing, and corrective action has been taken.

If the Driver fails to call their Station Manager or Safety Department, fails to submit a Collision/Injury/Incident Report within 12 hours of the event, and/or does not schedule a manager interview within 24 hours of the event, will result in immediate disciplinary action. The disciplinary action can result in employee re-training, suspension, or including termination. If a driver is determined unable to perform these requirements by a medical professional because of physical and/or mental conditions after a collision, injury, or incident, consideration will be taken.

At the time of a collision, injury, or incident the MTR Safety Manager is responsible for:

- Post event drug/alcohol testing as required by company policy or industry regulations
- Report the event and its circumstances to the proper organizational personnel
- Address questions by affected parties involved in the event (excluding media sources)
- Disciplinary actions and/or re-training based on root cause to correct driver associated issues.
- Insurance related issues associated with the collision/injury/incident

Executive Management responsibilities include:

- Coordinate activities associated with all collisions, injuries, or incidents to assure timely and appropriate company responses
- Respond to public and media inquiries regarding collisions, injuries, or incidents
- Evaluate, plan and apply necessary company resources to take corrective actions to manage the near- and long-term consequences of collisions, injuries, and incidents

Maintenance responsibilities include:

- Document vehicle damage with respect to any collision, injury, or incident
- Get repair estimates for the involved company vehicles (within 48 hrs.)
- Coordinate the maintenance activities with Station Managers and Safety

Station Manager Responsibilities include:

- Work with Safety to mitigate any operational impacts
- Drivers will be removed from service and will require re-training as a consequence of a preventable collision
- Safety will work with operations to return a driver to service in a timely manner upon review of any injury or incident
- Coordinate operational and maintenance activities to get the involved company vehicles back into operation

Forms/Documentation Required:

- Collision/Injury/Incident Reports
- RLI-Accident Reporting Kit
- Pictures of accident scene to include damages to any vehicles/structures
- Samsara Path Report/Speed Report
- State Required Collision Reports
- Federal or Forensic Drug and Alcohol Testing Documentation
- Driver Qualification Files
- Drug and Alcohol Test Results (Federal or Forensic Chain of Custody)
- Driver ELD Data/Log Book
- Electronic (Driver) Vehicle Inspection Report

We at MTR also follow an internal Incident Response Process (IRP) in the event of a major accident. The IRP outlines the Executive and Management teams responsibilities as well as the drivers responsibilities, notification of emergency services, internal, client, and community notification (if and when applicable). As part of our ongoing safety processes on a bi-annual basis an emergency drill is preformed to ensure all employees are fully prepared and really to respond quickly in the event of a major accident. The IRP can be provided for review upon the request of Clackamas County.

I-Tracker: MTR Incident Tracker is an online reporting solution. By providing our organization the ability to log Incident Reports electronically, it allows us to view and query them at any time. Managers can also view detailed analytic reports and trending graphs, create workflows, and even set automatic email alerts. A complete and comprehensive audit trail lists every single action that takes place within the application. MTR would provide any Incident Tracker reports in the key Performance Measurements.

Emergencies & Mechanical Issues: MTRWestern works day in and day out to ensure that our vehicles are running at optimal performance to avoid any breakdowns and/or service interruptions. In the event of a breakdown, we will assist drivers, get a replacement vehicle to the site of the breakdown and strive to keep service interruptions to a minimum. Drivers are to call and the Station Manager will work quickly to get a replacement vehicle onsite. The Station Manager will be in contact with the County throughout the situation in order to provide real time information and solutions.

Customer Service

Responsiveness to all complaints, comments, and positive feedback is critical to customer service excellence. Our employees are instructed to exhibit professionalism and kindness when receiving a complaint. MTRW's guidelines to handling a customer complaint are as follows;

- Fully engage, listen, and document all pertinent information.
- Respond graciously and patiently, while continuing to document, and confirm all details of the comment.
- If the comment is a complaint, provide information to the customer that it will be investigated, and that a supervisor may contact them directly as part of the investigation.
- Always show gratitude for taking the time to call, email, or voice their complaints, and for provide constructive feedback in how we can improve.

All complaints must be brought to the attention of the Station Manager. MTR will immediately take the necessary actions and begin to investigate the complaint to determine validity and/or corrective action steps. A formal complaint report will be provided to the County and the complaint will be logged and submitted appropriately with all monthly reports, as required.

Employees who receive repeated valid complaints will follow our progressive discipline policy up to and including termination of employment.

MAINTENANCE

MTR's strong philosophy in true preventive maintenance helps to ensure the safety of our guests. The only way to effectively minimize mechanical failures and service interruptions is to plan frequent and thorough maintenance with technicians trained to identify potential failures. Our comprehensive inspection and maintenance program assures the fleet is at optimal operating condition to service our customers. MTR utilizes electronic vehicle inspection records (EVIRs). This allows for more efficient inspection and tracking of write-up/repairs. We are very proud of how we manage equipment along with and of being a safety steward of our industry. We are very aware of our customer's image as well as our own. To ensure this is always top of mind, we pay particular attention to the following:

- **Vehicle maintenance/repairs standards.** All vehicles are maintained and comply with all county, state and federal laws, rules and regulations. We make sure all vehicles in our fleet meet or exceed the manufacturer's specifications, are in accordance with state's vehicle maintenance standards and the FTA regulations for Preventative Maintenance. All service records are kept for all vehicles and can be made available to Clackamas at any time. Reports will be provided in conjunction to the Contract. MTRWestern complies with all FTA and ODOT reporting requirements for maintenance and repair, and is certified to maintain ADA lifts.
- **Daily vehicle maintenance expectations.** At MTR, each driver is required to conduct daily pre- and post-trip vehicle inspections electronically through Samsara in all of our vehicles. Any vehicle problems and status of repair are reported through Samsara to the Station Manager and Maintenance Department. We will assess vehicle fleet priorities and mechanics' ability to make the repairs in a timely manner.

Our maintenance department is required to keep record of all preventative maintenance, out-of-service maintenance and warranty work on each and every vehicle they service. All records are kept and tracked electronically through RTA. This also goes for all outsourced vehicles.

FINANCIAL VIABILITY

As mentioned throughout the proposal, MTR has a strong ownership group, which is well capitalized and has a strong commitment to the financial success of the organization, along with a commitment to stewardship that ripples throughout the organization. Accountability and transparency are paramount to ensuring a healthy and sustainable organization.

This past year's financial audit, performed in November, by BDO, stated that MTR will remain a Going Concern through December of 2021. This past year has proven to be challenging for the transportation industry. The American Bus Association (ABA) has stated that over 40% of motor coach/shuttle operators will not be able to survive the devastating effects of COVID-19. It is because of our strong company culture, leadership, size, and ability to move quickly, that we have and will continue to remain a strong viable company through a global pandemic. Like the saying goes, "never let a good crisis go to waist," we have spent a considerable amount of time restructuring the organization, including a reduction in head count, reduction in discretionary expenditures, along with streamlining technologies, and efficiencies throughout the organization, without compromising any of our core values. We can confidently say and with 100% assurance that MTR will continue to be the largest operator in the Pacific Northwest for years to come.

ABILITY TO START SERVICE

Based on the current infrastructure and robust experience, MTR is established and ready to be able to begin service in February, or early March. We are currently set up with the facilities, technology, operations processes and procedures. Along with a full staff in operations, dispatch, safety, maintenance, drivers, and wash crew.

If awarded the contract MTR will immediately begin working with Clackamas County to provide a work back schedule to ensure a smooth start to service. We would suggest weekly conference video calls and/or in person meetings (dependent on COVID), as we approach the start date. Once service has begun, we would suggest continuing with weekly calls for the first month, move to bi-weekly in the second month, monthly meetings for the following three months, and quarterly meetings thereafter to ensure full transparency, accountability, and client satisfaction.

WHAT SETS MTR APART

As captured throughout the proposal, MTR is not your standard operator. Since 2003, MTR has earned a reputation as one of the leading transportation providers in the Pacific Northwest. We are leaders not only because we have importation and valuable transit, shuttle and event operation experience to bring to Clackamas County, but because we do things differently. We hold ourselves to the highest standard of safety and service, operate with attention to detail and an eye on the results, and we believe in building and nurturing strong partnerships with our employees and with agencies we serve. It is because of these reasons, along with the following, that make us unique and result in our client satisfaction.

- **Culture:** We at MTR have built a company culture that far exceeds our competitors. When making organizational decisions the first questions we ask ourselves is how will it affect the company culture. A number of our employees have sought out MTR because of our reputation around culture. It is both our culture that attracts and keeps our employees. Our employees have expressed how MTR “feels like family.” We have built an organization with large company benefits, yet we continue to maintain a family owned and intimate atmosphere.

- **Local Operator:** Part of the benefit in working with MTR is that we are not a national company, we are specific to the Pacific Northwest, meaning that we have roots here; we know the areas of operation and the challenges that can present themselves. Our ownership, board members, executive and management team, driver, dispatch, and operation live in both the greater Portland and Seattle area and are familiar with the services along with the area and communities. We have a deeply vested interest because we are local and take great pride in servicing our neighbors and community. Being local also allows us to understand the nuances of our services resulting in the ability to make any quickly needed adjustments, provide educated feedback, find additional efficiencies, and benefits.

- **Maintenance & Facility:** Unlike our competitors, we have a full maintenance and facilities location established in Portland Oregon. An established facility means a number of things;
 - The ability to start service quickly and with full-trained staff prepared and ready to begin service.
 - Set up office space for driver training, fielding community phone calls, and dispatching.
 - A full maintenance facility with highly trained and experienced mechanics, along with established partnerships with outside maintenance and Creative Bus for management of warranties.
 - Bus washing station and wash crew

- **Longevity & Sustainability:** As mentioned throughout the proposal MTR has taken great strides to ensuring our longevity and sustainability for years to come. Unlike some of the national operators, we are not currently a For Sale Company nor looking to make large structural changes. Contracting with a For Sale Company or a company looking to make any large structural changes can result in a high amount of disruption and lack of operational support.

- **Insurance:** As clear throughout the proposal, safety is our number one priority. It is because our dedication to safety that has resulted in the ability to continue to be fully insured to the requirements of the RFP. By contrast, to our competitive partners what are either self-insured or struggle to find insurance providers based on their past violations.

DIVERSITY & INCLUSION

At the core of our business, we value people and safety first. We feel that it is our duty and great responsibility to provide a safe workplace in which our employees feel comfortable and are not judged based on their race, religion, gender and/or sexual orientation. Our goal is to be an inclusive and to ensure we have created a safe work environment of diversity and inclusion so that all employees feel accepted, valued, and heard. To ensure that we are an organization with the appreciation and knowing that diversity is what makes us great, providing different viewpoints and ways to approach the business.

In environments where employees feel accepted and valued, they are also happier in their workplace and stay longer with a company. As a result, companies with greater diversity in the workplace have a lower turnover rates along with many additional benefits.

All MTR Employees are required to go through Sexual Harassment and Diversity & Inclusion training annually. We have a no tolerance policy when it comes to these matters. In the event that an allegation or complaint is made, weather in the company or from outside, the employee is immediately suspended pending investigation. Depending on the results and/or outcome of the investigation either further training will be required or termination of the employee.

SECTION 5.4

FEES

MTR Proposes operating the service at an hourly rate of \$56.01 per revenue hour over the length of the three-year term of the contract for all three services. Please refer to the below Bid Form for pricing breakdown.

MTR agrees to the term of the contract, stating that the hourly rate will remain the same if changes result in more than 15% of the contract hours, contract costs will be negotiated to neutralize impact.

Clackamas County - Request for Proposals #2020-83
 BID FORM

COST PROPOSAL OREGON CITY / CLACKAMS INDUSTRIAL SHUTTLES

Service Description	Approx. Service Hours per year	Total contract cost, per revenue hour: The hourly cost should reflect all fixed and variable costs involved in providing service.		Total Annual Cost per Service (cost/hour x revenue hours)	
		Year 1	Year 2	Year 1	Year 2
Deviated Fixed Route - Oregon City Shuttle	2600	\$ 56.01	\$ 56.01	\$ 145,626.00	\$ 145,626.00
Deviated Fixed Route - Clackams Industrial Shuttle	2600	\$ 56.01	\$ 56.01	\$ 145,626.00	\$ 145,626.00
Total Operation Contract Cost/Year	5200	\$ 56.01	\$ 56.01	\$ 291,252.00	\$ 291,252.00

COST PROPOSAL CCC XPRESS SHUTTLE

Service Description	Approx. Service Hours per year	Total contract cost, per revenue hour: The hourly cost should reflect all fixed and variable costs involved in providing service.		Total Annual Cost per Service (cost/hour x revenue hours)	
		Year 1	Year 2	Year 1	Year 2
Fixed Route - CCC Xpress Shuttle (Mon - Thurs)	4368	\$ 56.01	\$ 56.01	\$ 244,651.68	\$ 244,651.68
Fixed Route - CCC Xpress Shuttle (Friday)	208	\$ 56.01	\$ 56.01	\$ 11,650.08	\$ 11,650.08
Total Operation Contract Cost/Year	4576	\$ 56.01	\$ 56.01	\$ 256,301.76	\$ 256,301.76

SECTION 5.4

REFERENCES

1. City of Corvallis Oregon (CTS)
Tim Bates, *Transit Coordinator*
Timothy.bates@corvallisoregon.gov
541.754.1761
Contract Term: 2016 – Present

2. Columbia County Rider
John Dreeszen, *Transit Director*
john.dreeszen@columbiacountyor.gov
503-366-8503
Contract Term: 2016 – Present

3. Explore Washington Park
Heather McCarey, *Executive Director*
heather@explorewashingtonpark.org
503.416.2410
Contract Term: 2015 - Present

4. Downtown Seattle Association & Commute Seattle
Kevin Futhey, *Executive Director at Commute Seattle*
kevinf@commuteseattle.com
206.613.3230
Contract Term: 2018-2019

PROPOSAL CERTIFICATION
RFP #2020-83 Shuttle Operations Services

Submitted by: MTRWestern, LLC
(Must be entity's full legal name, and State of Formation)

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related documents and read the instruction and conditions, and hereby proposes to provide the services as specified in accordance with the RFP, for the price set forth in the Proposal documents.

Proposer, by signature below, hereby represents as follows:

- (a) That no County elected official, officer, agent or employee of the County is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the County, its elected officials, officers, agents, or employees had induced it to enter into this contract and the papers made a part hereof by its terms;
- (b) The Proposer, and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
 2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
 3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer fully understands and submits its Proposal with the specific knowledge that:
1. The selected Proposal must be approved by the Board of Commissioners.
 2. This offer to provide services will remain in effect at the prices proposed for a period of not less than ninety (90) calendar days from the date that Proposals are due, and that this offer may not be withdrawn or modified during that time.
- (d) That this Proposal is made without connection with any person, firm or corporation making a bid for the same material, and is in all respects, fair and without collusion or fraud.
- (e) That the Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
- (f) That the Proposer accepts all terms and conditions contained in this RFP and that the RFP and the Proposal, and any modifications, will be made part of the contract documents. It is understood that all Proposals will become part of the public file on this matter. The County reserves the right to reject any or all Proposals.
- (g) That the Proposer holds current licenses that businesses or services professionals operating in this state must hold in order to undertake or perform the work specified in these contract documents.
- (h) That the Proposer is covered by liability insurance and other insurance in the amount(s) required by the solicitation and in addition that the Proposer qualifies as a carrier insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- (i) That the Proposer is legally qualified to contract with the County.
- (j) That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

(k) The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in the Proposal.

Resident Bidder, as defined in ORS 279A.120

Non-Resident Proposer, Resident State

Oregon Business Registry Number 736015792

Contractor's Authorized Representative:

Signature:  Date: 1/14/2021
Name: Jeremy Butzlaff Title: President
Firm: MTRWestern
Address: 720 South Forest Street
City/State/Zip: Seattle, WA 98134 Phone: (206) 838-8143
e-mail: jeremyb@mtrwestern.com Fax: (206) 621-9750

Contract Manager:

Name Amanda Emery Title: VP of Sales
Phone number: (206) 687-8549
Email Address: amandae@mtrwestern.com

COST PROPOSAL OREGON CITY / CLACKAMS INDUSTRIAL SHUTTLES

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Total Operation Contract Cost/Year	4576	\$	56.01	\$	56.01	\$	256,301.76	\$	256,301.76

June 10, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #159475, Amendment 02 with the State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of the Oregon Money Management Program in Clackamas County

Purpose/Outcomes	Social Services-Money Management Program will continue to provide money management services to seniors and people with disabilities.
Dollar Amount and Fiscal Impact	The total agreement is \$458,050. Funded by State General Funds designated for the Oregon Money Management Program (OMMP).
Funding Source	State of Oregon. No County General Funds are involved
Duration	July 31, 2019 through June 30, 2021
Previous Board Action	071119-A3
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community:
County Council	Original agreement approved by County Council on 6/20/19. This amendment approved 5/12/21
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	9351

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services requests the approval of Agreement #159475, Amendment 02 with the State of Oregon, Department of Human Services, Aging and People with Disabilities for Oregon Money Management Program services. The Oregon Money Management Program (OMMP) is a protective service for seniors and disabled adults who need help managing their finances. This promotes independent living, and helps prevent homelessness and unnecessary institutionalization or guardianship. This service is offered free of charge to eligible individuals. OMMP staff train community volunteers to become Representative Payees and Bill Payers to support the financial needs of clients enrolled in other programs, including Mental Health and Developmental Disabilities. These volunteers work to ensure that the client's public benefits, such as Social Security and Supplemental Security Income (SSI), are used for high priority client needs like shelter, health and food. OMMP clients are referred by their case managers to receive money management services.

This agreement increases the rate as of March 1, 2021 for fiscal year 2020-21 and moving forward. This amendment increases the maximum funding from \$454,400 to \$458,050 and the term of the agreement remains June 30, 2021. The original agreement was reviewed and approved by County Council on June 20, 2019 and this amendment was approved on 5/12/21. This amendment is effective March 1, 2021 and terminates on June 30, 2021.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Tootie Smith, Board Chair or her designee; be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

Mary Rumbayn for Rodney A. Cook

Rodney A. Cook, Interim Director
Health, Housing and Human Services Dept.

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9351	Division: SS	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Reid, Stefanie	<input checked="" type="checkbox"/> Revenue
	Program Contact: Orner, Lois	<input checked="" type="checkbox"/> Amend # 2 \$ 3,610.00
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Thursday, June 10, 2021

CONTRACT WITH: 19-21 State of Oregon, #159475-0 DHS-APD

CONTRACT AMOUNT: \$458,050.00

TYPE OF CONTRACT

<input type="checkbox"/> Agency Service Contract	<input type="checkbox"/> Memo of Understanding/Agreement
<input type="checkbox"/> Construction Agreement	<input type="checkbox"/> Professional, Technical & Personal Services
<input checked="" type="checkbox"/> Intergovernmental Agreement	<input type="checkbox"/> Property/Rental/Lease
<input type="checkbox"/> Interagency Services Agreement	<input type="checkbox"/> One Off

DATE RANGE

<input checked="" type="checkbox"/> Full Fiscal Year _____ - _____	<input type="checkbox"/> 4 or 5 Year _____ - _____
<input type="checkbox"/> Upon Signature _____ - _____	<input type="checkbox"/> Biennium _____ - _____
<input type="checkbox"/> Other _____ - _____	<input checked="" type="checkbox"/> Retroactive Request? 3/1/2021 - 6/30/2021

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived
If no, explain why: _____

Business Automobile Liability: Yes No, not applicable No, waived
If no, explain why: _____

Professional Liability: Yes No, not applicable No, waived
If no, explain why: _____

Approved by Risk Mgr _____
Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Rastetter, Kathleen Date Approved: Wednesday, May 12, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: Brenda Durbin: approved via email 5/12/21

Date: _____

H3S Admin Only	Date Received: _____
	Date Signed: _____
	Date Sent: _____

AGREEMENTS/CONTRACTS

	New Agreement/Contract
X	Amendment/Change Order Original Number _____

ORIGINATING COUNTY

DEPARTMENT: Health, Housing Human Services
Social Services

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT: 19-21 State of Oregon, #159475-0 DHS-APD

BOARD AGENDA ITEM

NUMBER/DATE: _____ **DATE:** 6/10/2021

PURPOSE OF

CONTRACT/AGREEMENT: This is the funding agreement for the Oregon Money Management Program.

This amendment is a rate change for Money Management Service

H3S CONTRACT NUMBER: 9351



Agreement Number 159475

**AMENDMENT TO
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 is amendment number **02** to Agreement Number **159475** between the State of Oregon, acting by and through its Oregon Department of Human Services, hereinafter referred to as “ODHS” and

**Clackamas County
by and through its Social Services Division
Attn: Brenda Durbin
2051 Kaen Road, POB 2950
Oregon City, Oregon 97045
503.655.8640
brendadur@clackamas.us and stefanierei@clackamas.us**

hereinafter referred to as “County.”

1. Once fully executed, this amendment shall become effective on March 1, 2021, regardless of the date this amendment has been fully executed by every party.
2. The Agreement is hereby amended as follows:
 - a. The parties acknowledge and agree that, effective August 7, 2020, all references to Department of Human Services shall mean Oregon Department of Human Services and all references to DHS shall mean ODHS.
 - b. Section 3. Consideration, subsection a only as follows; language to be deleted is ~~struck through~~ and new language is shown **underlined and bold**:
 - a. The maximum, not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is **\$458,050.00** ~~\$454,440.00~~.

ODHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work until this Agreement has been signed by all parties.

- c. For services provided on or after the effective date of this amendment. Exhibit A, Part 2, Payment and Financial Reporting, Section 1e is hereby amended as follows. Language to be deleted is ~~struck through~~ and language to be added is shown **underlined and bold**

- e. Consumer Service Incentive Payments

ODHS will pay County a monthly Consumer service incentive payment calculated, as described below: The monthly incentive payment is calculated based upon how many Consumers receive MMP services in a subject month.

Consumer Service Incentive Payment shall be paid at **\$45.00** ~~\$40.00~~ per month per Consumer. Not to be paired with any other Consumer incentive.

- d. For services provided on and after the effective date of this amendment, Exhibit A, Part 2, Payment and Financial Reporting, Section 1f is hereby amended as follows. Language to be deleted is ~~struck through~~ and language to be added is shown **underlined and bold:**

- f. Complex Case Consumer Incentive

To qualify as a Complex Case the case must meet at least one of the following:

- 1) Income Cap trusts
- 2) APS cases that have regular ongoing involvement of four times or more per month.
- 3) Crisis case management: Cases requiring regular ongoing involvement of the coordinator, four times or more per month to mitigate the Consumer's crisis situation.

Complex Case Consumer Incentive Payment shall be paid at **\$85.00** ~~\$80.00~~ per month per Consumer. Not to exceed 25% of total Consumer caseload. This is a stand-alone incentive. Not to be paired with any other Consumer incentive.

An exception to the 25% of total caseload limit may be requested. If the exception is granted, a monthly report must be submitted with invoice. The report must include for each complex case a brief synopsis of the need, areas being addressed, barriers, time spent, progress to date, and the intended outcome for the Consumer.

- 3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the

same effect as though made at the time of this amendment.

4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement amendment, County hereby certifies under penalty of perjury that:
- a. 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) County and that pertains to this Agreement or to the project for which the Agreement work is being performed. 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 County;
 - b. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
 - c. 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;
 - d. County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
 - e. County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Nonprocurement Programs” found at: <https://www.sam.gov/SAM>;
 - f. County is not subject to backup withholding because:
 - (1) County is exempt from backup withholding;
 - (2) 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
 - (3) The IRS has notified County that County is no longer subject to backup withholding.
 - g. County hereby certifies that the FEIN provided to ODHS is true and accurate. If this information changes, County is required to provide ODHS with the new FEIN within 10 days.

5. County Data. 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 of

Street address: 2051 Kaen Rd.; POBox 2950

City, state, zip code: Oregon City, OR 97045

Email address: stefanierei@clackmas.us

Telephone: (503) 650-8330 Facsimile: (503) 650-8889

Proof of Insurance: County shall provide the following information upon submission of the signed Agreement Amendment. All insurance listed herein must be in effect prior to amendment execution. If County is self-insured for any of the Insurance Requirements specified in Exhibit C of this Agreement, County may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C.

General Commercial Insurance Company: Self-Insured Pool

Policy #: _____ Expiration Date: _____

Workers' Compensation Insurance Company: Self-Insured Pool

Policy #: _____ Expiration Date: _____

6. Signatures.

Clackamas County
by and through its Social Services Division

Authorized Signature Tootie Smith
Printed Name

Chair, Clackamas County Board of Commissioners
Title _____
Date

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

Authorized Signature _____
Printed Name

Title _____
Date

Approved for Legal Sufficiency:

Exempt per OAR 137-045-0050(2)
Department of Justice _____
Date

June 10, 2021

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval for the Children, Family & Community Connections (CFCC) Division of H3S to Apply to Housing Authority of Clackamas County for Supportive Housing Services

Purpose/Outcomes	The Supportive Housing Services program is intended to end chronic homelessness in Clackamas County. CFCC would propose a flexible, multi-component approach to scale up and strengthen connections between existing support services to prevent homelessness. This would include employment services, housing repairs, family navigation and outreach to extremely low income Clackamas County residents and culturally-specific communities to address issues directly related to homelessness.
Dollar Amount and Fiscal Impact	Grant application max award \$2,500,000 There is no match requirement. No County General Funds would be used.
Funding Source	Housing Authority of Clackamas County – Supportive Housing Services Program. <i>The RFP process is contingent upon available funds.</i>
Duration	Effective July 1, 2021 – June 30, 2022 (renewable up to 4 years)
Previous Board Action	n/a
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities.
Counsel Review	This Grant Award has been reviewed and approved by County Counsel: n/a
Procurement Review	Was the item processed through Procurement? No Grant Application
Contact Person	Adam Freer 971-533-4929
Contract No.	

BACKGROUND:

The Children, Family and Community Connections Division (CFCC) of the Health, Housing, and Human Services (H3S) Department requests approval to apply for the Supporting Housing Services Program funded through Clackamas County Housing Authority. CFCC works collaboratively and coordinates a broad range of public, private and Clackamas County partners to provide high-quality programs to meet the wrap-around needs of the individual, family and community. The proposed program would strengthen connections across services and systems and scale up capacity of vital services, including Employment & Training Services, Weatherization, Family Resource Coordinators, Public Health Community Health Workers, Youth Substance Prevention programs and the Youth Advisory Board.

The Supportive Housing Services program is intended to end chronic homelessness in Clackamas County. Programs work in coordination to ensure housing options are safe, stable, and provide housing choice to meet the needs of each individual. All services focus on building relationships and service engagement through person-centered, culturally-responsive, trauma-informed, strengths-based practices. *The RFP process is contingent upon available funds.*

RECOMMENDATION:

Staff recommends Board approval request to apply for funding award.

Respectfully submitted,

Mary Rumburg for Rodney A. Cook

Rodney E. Cook, Interim Director
Health, Housing & Human Services

Financial Assistance Applicant Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

** CONCEPTION **

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Lead Department:

H3S Children, Family & Community Connections (CFCC)

Application for: Subrecipient Assistance Direct Assistance

Grant Renewal? Yes No

If renewal, complete sections 1, 2, & 4 only

If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity:

Housing Authority of Clackamas County, Supportive Housing Services Program (RFP #014-2021)

Funding Source: Federal State Local

Requestor Information (Name of staff person initiating form):

Adam Freer

Requestor Contact Information:

afreer@clackamas.us; 971 533 4929

Department Fiscal Representative:

Ed Johnson

Program Name or Number (please specify):

Children, Family & Community Connections (CFCC) - Fund 246

Brief Description of Project:

Stable Homes is a flexible, multi-component approach that will scale up and strengthen connections between existing supportive services to prevent homelessness by keeping people safely housed and addressing a wide range of factors directly related to homelessness, including economic stability, health, basic needs and the integrity and safety of the physical home. The approach would include scaling up of certain critical services, such as employment services, housing repairs, family navigation and outreach to extremely low income and culturally-specific communities.

Name of Funding Agency:

Housing Authority of Clackamas County

Agency's Web Address for funding agency Guidelines and Contact Information:

<https://dochub.clackamas.us/documents/drupal/f68c4702-1fca-40fa-b556-bb2b2aa955bc>

OR

Application Packet Attached: Yes No

Completed By:

Adam Freer

5.5.21

Date

** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE **

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Application

Non-Competing Application

Other

CFDA(s), if applicable:

N/A

Funding Agency Award Notification Date:

June 10, 2021

Announcement Date:

April 15, 2021

Announcement/Opportunity #:

#04-2021

Grant Category/Title:

Supportive Housing Services Program

Max Award Value:

2,500,000 per year

Allows Indirect/Rate:

Yes - no limit mentioned

Match Requirement:

None

Application Deadline:

May 17, 2021

Other Deadlines:

None

Award Start Date:

July 1, 2021

Other Deadline Description:

None

Award End Date:

June 30, 2022 (renewable up to 4 years)

Completed By:

Adam Freer

Program Income Requirement:

None

Pre-Application Meeting Schedule:

Information Session 5/5/21 4-5:30 Discussed at CFCC Mgmt Team weekly meetings - Mondays 3:30-5 pm

Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff

Mission/Purpose:

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

The funding would allow the division to address more needs and in a more streamlined manner.

2. What, if any, are the community partners who might be better suited to perform this work?

The approach would entail strengthening connections across many providers and services - each doing what they do best and in close coordination.

3. What are the objectives of this funding opportunity? How will we meet these objectives?

Reduce homelessness. This will be done by addressing a broad range of underlying factors that lead to homelessness including degradation of existing homes (that leads to condemning), health, mental health, lack of ~~basic needs, unemployment, etc.~~

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

Yes. It would enhance several programs including: CFCC Employment & Training Services, CFCC Weatherization Services, Family Resource Coordinators (subcontracted), Community Health Workers (PH), Youth Advisory Board

Organizational Capacity:

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

No. Additional staff would need to be hired, which is necessary to meet more of the existing need for the proposed services.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

Yes. Public Health Division - Community Health Workers; DHS - referrals and case coordination; HACC - referrals; Northwest Family Services & Metropolitan Family Services - Family Resource Coordinators (assessment services) and case management

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

The grant is renewable up to 4 years. During that time, the viability of the program will be continually assessed and additional funding will be sought as appropriate to sustain or expand the services.

Collaboration

1. List County departments that will collaborate on this award, if any.

H3S - Public Health, Housing Authority (beyond funding)

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

Not stated in the RFP.

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

We would use the Homeless Management Information System (HMIS) to track data as required by the funder.

3. What are the fiscal reporting requirements for this funding?

Not stated in the RFP.

Fiscal

1. Will we realize more benefit than this financial assistance will cost to administer?

Yes.

2. Are other revenue sources required? Have they already been secured?

No.

3. For applications with a match requirement, how much is required (in dollars), and what type of funding will be used to meet it (Cash-CGF, In-kind meaning the value from a 3rd party/non-county entity, Local Grant, etc.)?

N/A

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Yes

Program Approval:

Adam Freer

5.5.21

Name (Typed/Printed)

Date

Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

****ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.****

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Adam Freer	5.5.21	
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Mary Rumbaugh for Rodney A Cook	5-5-2021	Mary Rumbaugh
Name (Typed/Printed)	Date	Signature
Digitally signed by Mary Rumbaugh Date: 2021.05.06 09:19:58 -0700'		

FINANCE SENIOR COMPLIANCE SPECIALIST		
Elizabeth Comfort	5.6.2021	Elizabeth Comfort
Name (Typed/Printed)	Date	Signature
Digitally signed by Elizabeth Comfort Date: 2021.05.06 16:43:26 -0700'		

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)

For applications less than \$150,000:

COUNTY ADMINISTRATOR	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

For applications greater than \$150,000 or which otherwise require BCC approval:

BCC Agenda item #: Date:

OR

Policy Session Date:

County Administration Attestation

**County Administration: re-route to department contact when fully approved.
Department: keep original with your grant file.**

June 10, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Construction Contract between Clackamas County and
Banlin Construction LLC for the Sandy Health Center Project

Purpose/ Outcome	This request is for the approval of a Construction Contract through Health, Housing and Human Services Department, and Health Centers Division, to build a new Health Center within the City of Sandy.
Dollar Amount and Fiscal Impact	Health Centers Division funds for \$4,738,515 dollars. No County General Funds will be used for this project.
Funding Source	Health Centers Division funds
Duration	June 2021 – February 2022, Planned Construction Schedule.
Previous Board Action/ Review	No prior Board Action
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities. 2. Building a strong infrastructure.
County Review	This Construction Contract was reviewed and approved by County Counsel AN on May 17, 2021
Procurement Review	1. Was the item processed through Procurement? Yes 2. Procurement and H3S worked together for review and advertisement of this publicly bid project.
Contact Person	Deborah Cockrell – Health Centers Division, Director: 503-756-9674
Contract No.	H3S 10157

BACKGROUND: The Health Centers Division of the Health, Housing and Human Services Department requests the approval of this Construction Contract with Banlin Construction LLC for the Sandy Health Center Project. The Construction Contract determines the roles of Banlin Construction LLC and the County regarding contract administration, project management, as well as interaction with the Health Center’s hired architect (Ankrom Moisan) during project construction. Banlin Construction LLC was determined the lowest responsive bidder of a total of nine (9) construction companies submitted bids for this project on May 6, 2021.

PROJECT OVERVIEW: The new Sandy Health Center Project is a 9,500 square foot one-level facility that will provide behavioral care, dental care, health care, and a modest pharmacy. This new building will service the City of Sandy, and rural Clackamas County. The new building address is 39740 Pleasant Street, Sandy Oregon, 97055. The property is located at the corner of Ten Eyck Road and Highway 26, the east side of Sandy.

RECOMMENDATION: We recommend the approval of this Construction Contract and that Tootie Smith, Chair of the Board of County Commissioners be authorized to sign on behalf of the Board of County Commissioners.

Healthy Families. Strong Communities.

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

www.clackamas.us

Respectfully submitted,

*Mary Rombard for
Rodney A. Cook*
Rodney A. Cook, Interim Director
Health, Housing and Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10157

Division: CD

Subrecipient

Board Order #:

Contact: Kelly, Steve

Revenue

Program Contact:

Amend # \$

Sirois, Mark

Procurement Verified

Aggregate Total Verified

Non BCC Item BCC Agenda

Date: Friday, June 18, 2021

CONTRACT WITH: Banlin Construction, LLC - Sandy Health Center Project

CONTRACT AMOUNT: \$4,738,515.00

TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

DATE RANGE

Full Fiscal Year

4 or 5 Year

Upon Signature

Biennium

Other 6/22/2021

Retroactive Request?

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability:

Yes No, not applicable No, waived

If no, explain why:

Business Automobile Liability:

Yes No, not applicable No, waived

If no, explain why:

Professional Liability:

Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Andrew Naylor

Date Approved: Monday, May 17, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE:

Date: _____

Mark Sirois
5/18/2021

H3S Admin
Only

Date Received: _____

Date Signed: _____

Date Sent: _____

AGREEMENTS/CONTRACTS

X **New Agreement/Contract**
Amendment/Change Order Original Number _____

ORIGINATING COUNTY

DEPARTMENT: Health, Housing Human Services
Community Development

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT: Banlin Construction, LLC - Sandy Health Center Projec

BOARD AGENDA ITEM

NUMBER/DATE:

DATE: 6/18/2021

PURPOSE OF

CONTRACT/AGREEMENT: New Construction - for the New Sandy Health Center
Project/ Site Address: 39740 Pleasant Street, Sandy,
Oregon 97055

H3S CONTRACT NUMBER: 10157



**CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT**

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

Project Name/ H3S Contract Number: Sandy Health Center / #10157

Project Address: 39740 Pleasant Street, Sandy, Oregon 97055

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **Four Million Seven Hundred Thirty Eight Thousand Five Hundred Fifteen Dollars (\$4,738,515.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid, as indicated in the accepted Bid.

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

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addendums: 3
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions (dated Jan. 1, 2020)
- Prevailing Wage Rates
- Plans, Specifications and Drawings

2. Representatives.

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

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

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

3. Key Persons.

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

working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Larry Brooks/ 360-839-4944 shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: Larry Brooks/ 360-839-4944 shall be the Contractor's project manager and will participate in all meetings throughout the project term.

Job Superintendent: Mike Sliwinski/ 360-852-1949 shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Riley Ollero/ 509-586-2000 shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed (Tuesday, June 22, 2021)

SUBSTANTIAL COMPLETION DATE: 210 Days from Notice to Proceed (Tuesday, January 25, 2022)

FINAL COMPLETION DATE: 225 Days from Notice to Proceed (Wednesday, February 9, 2022)

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

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County Health Centers Division as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Project Coordinator, Steve Kelly at stevekel@clackamas.us.

6. Tax Compliance.

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

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political

subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

7. Confidential Information.

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

8. Counterparts.

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

9. Integration.

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

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

10. Liquidated Damages.

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. Liquidated Damages shall be \$1,500 per Calendar day if the actual Substantial Completion exceeds the required date of Substantial Completion, and \$ 1,500 per Calendar day if the actual Final Completion exceeds the required date of Final Completion.

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

12. Compliance with Applicable Funding Source Requirements. Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein. Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Contract including, but not limited to, executing all additional

documentation necessary for County to comply with applicable State or Federal funding requirements, together with all documentation necessary to deposit withheld retainage into an escrow account in accordance with Section 14, below.

13. Use of an Escrow Account. Pursuant to ORS 279C.570, amounts deducted by County for retainage shall be kept in an escrow account under the terms and conditions of that certain escrow agreement executed by and between the County and U.S. Bank N.A. ("Escrow Agreement"), a copy of which is attached hereto as Exhibit A and incorporated by this reference herein. Contractor expressly agrees that the terms and conditions of the Escrow Agreement, together with the General Conditions, shall govern the deposit of withheld retainage into an escrow account.

14. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

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

Contractor DATA:
Banlin Construction, LLC
320 W Columbia Drive
Kennewick, WA, 99336

Oregon Contractor CCB#: 217136 Expiration Date: September 7, 2021
Oregon Business Registry#: 1358564-90 Entity Type: DLLC
State of Formation: Washington

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

Banlin Construction, LLC
320 W Columbia Drive
Kennewick, WA 99336

Clackamas County

Chair Tootie Smith
Commissioner Sonya Fischer
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Mark Shull

Jasen Banta 5-17-2021
Signature Date

Jasen, Banta, Owner

Tootie Smith, Chair Date
Board of County Commissioners

90-0810742
Federal Tax I.D. No. or Last Four SSN

APPROVED AS TO FORM

217136
Oregon Commercial Contractor's Board No.

Andrew Naylor May 17, 2021
County Counsel Date

June 10, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Accept a Grant Award with Tides Foundation, in partnership with Kaiser Permanente for participation in the Virtual Care Innovation Network – Clinic Connection Track

Purpose/Outcomes	Participation in this program will allow Health Centers to learn from others in how to most effectively provide translation services in alternate care settings. Health Centers hopes to learn how to more effectively provide RN Triage and leverage all members of the care team.
Dollar Amount and Fiscal Impact	The maximum agreement value is \$12,000.
Funding Source	Tides Foundation. No County General Funds are involved.
Duration	Effective March 2, 2021 and terminates on May 31, 2022
Previous Board Action	No Previous Board Actions have been taken.
Strategic Plan Alignment	1. Improve Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	1. May 18, 2021 2. KR
Procurement Review	1. Was the item process through Procurement? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> 2. This is a direct procurement of a grant.
Contact Person	Deborah Cockrell, Health Center Director – 503-742-5495
Contract No.	10164

BACKGROUND:

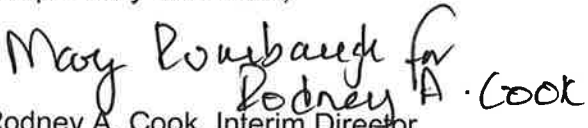
Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with Tides Foundation to participate in the Virtual Care Innovation Network (VCIN), a community health collaborative funded by Kaiser Permanente. Funding will allow Health Centers to engage with peers to discuss and solve challenges related to providing and sustaining virtual care.

This Agreement has a maximum value of \$12,000. It is effective March 2, 2021 and terminates on May 31, 2022.

RECOMMENDATION:

Staff recommends approval of this agreement and authorizes the Director of Health, Housing and Human Services to sign this agreement.

Respectfully submitted,


Rodney A. Cook, Interim Director
Health, Housing & Human Services Department

Healthy Families. Strong Communities.

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10164	Division: HC	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Howard, Rebecca	<input checked="" type="checkbox"/> Revenue
	Program Contact: Suchocki, Andrew	<input type="checkbox"/> Amend # \$
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item **BCC Agenda** **Date:** Thursday, June 10, 2021

CONTRACT WITH: Tides Foundation

CONTRACT AMOUNT: \$12,000.00

TYPE OF CONTRACT

<input type="checkbox"/> Agency Service Contract	<input type="checkbox"/> Memo of Understanding/Agreement
<input type="checkbox"/> Construction Agreement	<input type="checkbox"/> Professional, Technical & Personal Services
<input type="checkbox"/> Intergovernmental Agreement	<input type="checkbox"/> Property/Rental/Lease
<input type="checkbox"/> Interagency Services Agreement	<input type="checkbox"/> One Off

DATE RANGE

<input type="checkbox"/> Full Fiscal Year _____ - _____	<input type="checkbox"/> 4 or 5 Year _____ - _____
<input type="checkbox"/> Upon Signature _____ - _____	<input type="checkbox"/> Biennium _____ - _____
<input type="checkbox"/> Other _____ - _____	<input checked="" type="checkbox"/> Retroactive Request? 3/2/2021 - 5/31/2022

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived
If no, explain why: _____

Business Automobile Liability: Yes No, not applicable No, waived
If no, explain why: _____

Professional Liability: Yes No, not applicable No, waived
If no, explain why: _____

Approved by Risk Mgr _____
Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Rastetter, Kathleen Date Approved: Tuesday, May 18, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin Only	Date Received: _____
	Date Signed: _____
	Date Sent: _____

Financial Assistance Application Lifecycle Form

Use this form to track your potential grant from conception to submission.
Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**** CONCEPTION ****

Note: The processes outlined in this form are not applicable to disaster recovery grants.

Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: H3S-Health Centers Division
Application for: Subrecipient Assistance Direct Assistance
Grant Renewal? Yes No
If renewal, complete sections 1, 2, & 4 only
If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity: Virtual Care Innovation Network

Funding Source: Federal State Local
Requestor Information (Name of staff person initiating form): Dr. Andrew Suchocki
Requestor Contact Information: asuchocki@clackamas.us or 503-650-3932
Department Fiscal Representative: Sarah Jacobson: sjacobson@clackamas.us or 503-742-5303
Program Name or Number (please specify): MFR Program: 400502 - Primary Care Clinics
Brief Description of Project:

Participation in this program will allow us to learn from others in how to most effectively provide translation services in alternate care settings. We hope to learn how to more effectively provide RN triage and leverage all members of the care team.

Name of Funding Agency: Tides Foundation

Agency's Web Address for funding agency Guidelines and Contact Information:

<https://www.careinnovations.org/programs/virtual-care-innovation-network/>

OR

Application Packet Attached: Yes No
Completed By: Jennifer Stone 4/14/2021
Date

**** NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE ****

Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Application <input type="checkbox"/>	Non-Competing Application <input type="checkbox"/>	Other <input checked="" type="checkbox"/>
CFDA(s), if applicable:	<u>N/A</u>	Funding Agency Award Notification Date: <u>N/A</u>
Announcement Date:	<u>November 2020</u>	Announcement/Opportunity #: <u>TF2102-097981</u>
Grant Category/Title:	<u>Care Innovations Fund</u>	Max Award Value: <u>12,000.00</u>
Allows Indirect/Rate:	<u>Yes</u>	Match Requirement: <u>N/A</u>
Application Deadline:	<u>11/25/2020</u>	Other Deadlines: <u>6/15/2021, 12/15/2021, 6/15/2022</u>
Award Start Date:	<u>3/2/2021</u>	Other Deadline Description: <u>Initial Data, Mid-Point Data, Final Data</u>
Award End Date:	<u>5/31/2022</u>	
Completed By:	<u>Jennifer Stone</u>	Program Income Requirement: <u>N/A</u>
Pre-Application Meeting Schedule:	<u>N/A</u>	

Collaboration

1. List County departments that will collaborate on this award, if any.

N/A

Reporting Requirements

1. What are the program reporting requirements for this grant/funding opportunity?

Initial data 6/15/2021, mid-point data 12/15/2021 and final data 6/15/2022

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

Participation in learning collaborative.

3. What are the fiscal reporting requirements for this funding?

Final narrative and expenditures report due 6/15/2022.

Fiscal

1. Will we realize more benefit than this financial assistance will cost to administer?

We will realize more benefit than cost. Much of the cost incurred by these services are already budget for and will be covered by this grant.

2. Are other revenue sources required? Have they already been secured?

No other revenue sources are required.

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

N/A

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

No, the grant/financial assistance does not cover indirect costs.

Program Approval:

Andrew Suchocki

5-4-2021

Andrew Suchocki Digitally signed by Andrew Suchocki
Date: 2021.05.04 14:25:29 -0700

Name (Typed/Printed)

Date

Signature

**** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR ****

****ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.****



April 6, 2021

Gary Schmidt
County Administrator
County of Clackamas, Oregon
Clackamas Health Centers
2501 Kaen Road, Suite 367
Oregon City, Oregon 97045

Grant Reference #: TF2102-097981

Dear Gary Schmidt,

I am happy to inform you that Tides Foundation, on the recommendation of Center for Care Innovations Fund, in partnership with Kaiser Permanente, has decided to give your organization a grant in the amount of \$12,000.00. This grant is for your organization's Clackamas Health Centers' participation in the Virtual Care Innovation Network - Clinic Connection Track. The grant period is from March 2, 2021 to May 31, 2022. On behalf of the Tides community, I would like to thank you for your important work in this field.

Your payment schedule is reflected in the table below:

Payment Number	Scheduled Payment Date	Payment Amount	Payment Method	Payment Delivery
1 of 2	April 6, 2021	\$10,000.00	Check	Checks are sent separately via first-class mail to the address on this award letter and should arrive within 5-7 business days from the scheduled payment date.
2 of 2	June 15, 2022 (upon receipt of final data submission and narrative and expenditures report)	\$2,000.00	Check	Checks are sent separately via first-class mail to the address on this award letter and should arrive within 5-7 business days from the scheduled payment date.

By accepting payment, you agree to all the terms and conditions set forth in this letter.

The conditions of this grant are as follows:

Please refer to Appendix A.

Your organization agrees to submit reports following the report schedule below:

Report Due Date	Report Type
By June 15, 2022	Narrative and Financial Report

TIDES FOUNDATION

SAN FRANCISCO 1012 Torney Avenue / San Francisco, California 94129 / T 415.561.6400 F 415.561.6401
NEW YORK 55 Exchange Place, Suite 402 / New York, New York 10005 / T 212.509.1049 F 212.509.1059

discontinue funding associated with this grant if your organization fails to comply with the terms of this Grant Award Letter, or if Tides determines that any statements, representations or documents provided by your organization, including in any grant reports, is false or materially misleading. In such an event, your organization agrees, at Tides' request, to repay grant funds and/or redirect them to another organization selected by Tides to carry out the purposes of this grant. Your organization will indemnify, defend and hold Tides harmless from any costs or damages incurred by Tides related to any misrepresentation in or failure to comply with this Grant Award Letter.

Your organization certifies that it is legally authorized to receive this grant under its own policies, as well as any other applicable laws and regulations. Your organization certifies that the person accepting payment has the authority and has obtained all necessary approvals to accept the grant award.

If the Donor or Fund Advisor is known to you, your organization agrees that it shall not use any portion of this grant to make any grant or loan, pay compensation, reimburse expenses, or make any other similar payment to: (i) any Donor to this Fund, (ii) any Fund Advisor to this Fund, (iii) any Relative of a Donor or Fund Advisor to this Fund, or (iv) any Controlled Entity.

If you have occasion to announce or acknowledge this grant publicly, please indicate that support was provided by Center for Care Innovations Fund, in partnership with Kaiser Permanente at Tides Foundation.

Should you have questions regarding your grants, please refer to the contact information in Appendix A.

Tides envisions a world of shared prosperity and social justice founded on equality and human rights, sustainable environment, quality education, and healthy individuals and communities. Since 1976, Tides has partnered with innovative organizations to accelerate the pace of social change and solve society's toughest problems. We are proud to include your organization in that history.

Sincerely,

A handwritten signature in cursive script that reads "Janiece Evans-Page". The signature is written in black ink and is positioned above the printed name and title.

Janiece Evans-Page
Chief Executive Officer

TIDESFOUNDATION

SAN FRANCISCO 1012 Torney Avenue / San Francisco, California 94129 / T 415.561.6400 F 415.561.6401

NEW YORK 55 Exchange Place, Suite 402 / New York, New York 10005 / T 212.509.1049 F 212.509.1059

June 10, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a HOME Loan Documents with
Webster Road Housing Limited Partnership
for the Webster Road Redevelopment in Gladstone, Oregon**

Purpose/Outcomes	HOME program funds will assist in the development of 48 affordable rental housing units in the Webster Road Redevelopment project.
Dollar Amount and Fiscal Impact	Total HOME funds is \$400,000 long-term loan, 0.0% interest deferred No County General Funds are involved.
Funding Source	The fund source is the FY19 and FY20 HOME Investment Partnerships Program allocations which the County receives annually from the US Department of Housing and Urban Development (HUD). No County General Funds are involved.
Duration	The term of the loan is 55 years, beginning at Effective Date (agreement signed by both parties) and ending in June 2076. The Period of Affordability is 60 years from date of project completion (HOME initial period of affordability is 15 years and an extended period of affordability of 45 years).
Previous Board Action	No previous Board action. This is a new HOME project.
Strategic Plan Alignment	Increasing housing choice and housing opportunity for low to moderate income households.
Contact Person	Pamela Anderson, Manager, Community Development (971) 804-3464
Contract No.	10158

BACKGROUND:

Clackamas County receives HOME funds annually from the U.S. Department of Housing and Urban Development (HUD) as an entitlement jurisdiction. The HOME Program provides funds to non-profit and for-profit entities to develop, preserve and expand the affordable housing stock in Clackamas County. HOME funds are allocated to this project as a 0% interest deferred loan, and will be secured by a Trust Deed and Promissory Note. HOME assisted units are required to be affordable for an extended period of time (period of affordability) which is enforced by a written HOME Agreement and Declaration of Land Use and restrictive Covenants.

This application was received by Clackamas County H3S Community Development Division in March 2020 and is located at 18000 Webster Road in Gladstone, Oregon. It is a HOME eligible project.

The Housing Authority of Clackamas County is proposing to enter into a lease-hold agreement with Webster Road Housing Limited Partnership for the rehabilitation of a single-story wood-framed building

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www.clackamas.us

originally constructed in the mid 1960's. The 24,000 square foot building has been vacant since 2017. This project will redevelop a former congregate care facility into a mix of forty-eight studios (40) and SRO (8) units; which includes 4 HOME-assisted floating units. The rehabilitated building will provide subsidized rent in all units allowing low income residents to have affordable rents that don't exceed 30% of their income. This project will, at initial occupancy of all HOME assisted units, be rented to tenants whose incomes are less than or equal to 50% of the Median Income. Submitted invoices will be reviewed for HOME eligible expenses prior to approval.

The loan term, as presented in the Loan Agreement; is 55 years, beginning at Effective Date (agreement signed by both parties) and ending in June 2076. The Period of Affordability is 60 years from date of project completion (HOME initial period of affordability is 15 years and an extended period of affordability of 45 years).

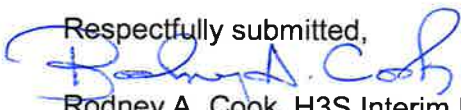
The Housing Authority of Clackamas County provided detailed project information and discussion at the May 18th Housing Authority Board Issues meeting.

RECOMMENDATION:

We recommend the approval of this HOME Loan Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants. Please be aware that Exhibit B to D is subject to minor changes prior to closing.

In addition, due to closing constraints, some documents may not be ready for approval until on or immediately before closing. To H3S's knowledge, this would include a priority and subordination agreement to be executed between all the lenders to the project. The priority and subordination agreement simply details the agreed-upon priority of all lenders financing the Webster Road project and is standard for this kind of transaction. Unfortunately, this document is not yet complete and likely won't be finalized until close to closing. Given this, H3S requests that the Chair of the Board of Clackamas County Commissioners, or her delegate, or the Clackamas County Administrator, be delegated authority to execute the HOME Loan Agreement, the Promissory Note, the Trust Deed, the Declaration of Land Use Restrictive Covenants, together with all related documentation, including a priority and subordination agreement, necessary to complete this transaction. This delegation is requested solely for documents that do not make any substantive or material change to this transaction.

Respectfully submitted,



Rodney A. Cook, H3S Interim Director

Attachments:

- Contract Transmittal Form H3S
- Policy Session Request form / worksheet
- HOME Loan Agreement
- HOME Promissory Note
- HOME Declaration of Land Use Restrictive Covenants
- Trust Deed

Contract Transmittal Form
Health, Housing & Human Services Department

H3S Contract #: 10158

Division: CD

Subrecipient

Board Order #:

Contact: Anderson, Pamela

Revenue

Program Contact:

Amend # \$

Anderson, Pamela

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

Date: Thursday, June 10, 2021

CONTRACT WITH: WEBSTER ROAD HOUSING LIMITED PARTHERSHIP

CONTRACT AMOUNT: \$400,000.00

TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

DATE RANGE

Full Fiscal Year -

4 or 5 Year -

Upon Signature -

Biennium -

Other -

Retroactive Request? -

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability:

Yes

No, not applicable

No, waived

If no, explain why:

Business Automobile Liability:

Yes

No, not applicable

No, waived

If no, explain why:

Professional Liability:

Yes

No, not applicable

No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No

Yes (must have CC approval-next box)

N/A

(Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Andrew Naylor

Date Approved: Monday, May 17, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE:

Pamela Anderson

Date: *May 18, 2021*

H3S Admin
Only

Date Received: _____

Date Signed: _____

Date Sent: _____

AGREEMENTS/CONTRACTS

X New Agreement/Contract
Amendment/Change Order Original Number _____

ORIGINATING COUNTY

**DEPARTMENT: Health, Housing Human Services
Community Development**

PURCHASING FOR: Contracted Services _____

OTHER PARTY TO

CONTRACT/AGREEMENT: WEBSTER ROAD HOUSING LIMITED PARTHERSHIP _____

BOARD AGENDA ITEM

NUMBER/DATE: _____ **DATE: 6/10/2021** _____

PURPOSE OF

CONTRACT/AGREEMENT: HOME funds will be provided as a 0% loan to assist in the rehabilitation of a former congregate care facility into a mix of forty-eight studios (40) and SRO (8) units in Gladstone, OR. 4 units are designated HOME units. The development will be located at 18000 Webster Road in Gladstone, Oregon.

H3S CONTRACT NUMBER: 10158 _____

LOAN AGREEMENT
CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Webster Road Redevelopment Project

This Loan Agreement ("**Agreement**") is entered into between the **Webster Road Housing Limited Partnership**, an Oregon limited partnership, ("**Owner**") and CLACKAMAS COUNTY, a political subdivision of the State of Oregon ("**County**"), a Participating Jurisdiction under the HOME Investment Partnerships Program ("**HOME**").

This Agreement includes the following attachments:

- | | |
|-----------------------------|--|
| A. Legal Description | E. HOME Affordability Requirements |
| B. Sources and Uses | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| C. Schedule of Tasks | G. Project Completion documentation |
| D. HOME Match Contributions | H. VAWA Notification and Certification |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
 - a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **CHDO.** Community Housing Development Organization. This is a HOME specific designation. There is no CHDO designated for this Project.
 - d. **Effective Date.** Effective Date has the meaning set forth in Section 35 of this Agreement.
 - e. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units ("HOME units") are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
 - f. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
 - g. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD's regulations and requirements for the HOME Program are located in 24 CFR Part 92. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - h. **HUD.** The United States Department of Housing and Urban Development
 - i. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
 - j. **Low-Income, Very Low-Income & Extremely Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County's Median Income. A Very Low-Income household is one whose total income does not exceed 50% of the County's Median Income. A Extremely Low-Income household is one whose total income does not exceed 30% of the County's Median Income.
 - k. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
 - l. **Owner.** The initial Owner and any subsequent Project owner

- m. **Period of Affordability.** See Section 9 below.
- n. **Project.** The project consists of Owner's leasehold interest in the real property located at 18000 Webster Rd., Gladstone, OR 97027 (the "**Property**"), upon which Owner will rehabilitate a former multi-family housing facility into a 48-unit affordable housing development. Housing and parking will be contained in a single structure. The legal description for the Property is set forth in **Attachment A**.
- o. **Project Completion Date.** The later of the date when (a) the construction is completed, (b) the final HOME drawdown has been disbursed to the Project, or (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown. This date will start the HOME Period of Affordability (see Section 9 below).

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of **\$400,000** to the **Owner** for the Project. The HOME funds will be used for the development of the Project as specified in **Attachment B**. Use of the HOME funds for any other purpose, without the expressed written consent of the County is prohibited and may constitute a breach of this agreement. Pursuant to 24 CFR 92.504, Owner may not request disbursement of funds until funds are needed for payment of eligible costs and documentation to substantiate costs is provided to County.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of 55 years from the Effective Date**. Loan repayment, satisfaction, or conveyance shall not relieve Owner of any performance, affordability or programmatic obligations and requirements of the HOME program.
 - ii. Notwithstanding the loan terms described above, and subject to available sale or refinance proceeds, the entire amount of the loan (\$400,000) together with any accrued interest, if any, or fees, shall be paid in full upon the refinance, sale, assignment or other transfer of title to the Project, except as provided in the Declaration of Land Use Restrictive Covenants; or the date Owner or its agents or subcontractors is in default under any of the Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Sections 9 & 10 below, failure to acquire title to the Project, or failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents) and such default continues beyond any applicable notice, grace or cure periods.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, and a Declaration of Land Use Restrictive Covenants, and secured by a Trust Deed executed by Owner in favor of the County all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents**."
- d. **Recording Requirement:** The Owner agrees to execute and record, or cause to be recorded, on the Project, the Trust Deed and the Declaration of Land Use Restrictive Covenants, within 30 days after signing the Loan Documents.

3. PAYMENT OF OBLIGATION.

- a. The outstanding principal balance of the loan shall be repaid in full on the maturity date set forth in Section 2(b)(i) above. Except as provided in Section 2(b)(i) above, payment of principal shall not be required prior to such maturity date. No late fees will be charged.
- b. Payments shall be made at such place as County may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

4. HOME-ASSISTED UNITS

- a. Four (4) units in the Project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the Project, including, but not limited to, this loan. The HOME units are as follows:

Bedroom Size	TOTAL UNITS	Non Home assisted Units	Total Units HOME-Assisted
0-bedroom units:	48	44	4
1-bedroom unit:	0	0	0
2-bedroom unit:	0	0	0
TOTALS	48	44	4

- b. Fixed/Floating: The HOME-Assisted units are designated as **FLOATING HOME** units as defined at 24 CFR 92.252 (j).
- c. Rent income limits: Rent income limits for the HOME-Assisted Units are set forth in Section 10 below, and **Attachment E**.
- d. Special Needs Set-aside. A minimum of 5% of the units in the Project (but not less than one) must be accessible to individuals with mobility impairment, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. 5 units will be accessible to individuals with physical/mobility impairment; and 2 units will be accessible to individuals with sensory impairments.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. All sources and uses of funds for the acquisition phase of the Project are set forth in **Attachment B**. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the Project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

6. MATCH REQUIREMENT

Attachment D documents the Project-related eligible sources of matching contributions as allowed by 24 CFR 92.218 through 92.222.

7. HOME REGULATIONS

The Owner agrees to comply with the HOME Regulations and with the other requirements of the Loan Documents.

8. ENVIRONMENTAL REVIEW (§92.352)

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. This shall be 15 years for all rehabilitated HOME units**, without regard to the term of the loan or the transfer of

ownership, except as noted in subsection d below. The Initial Period of Affordability begins on the Project Completion Date entered into HUD IDIS.

- b. The **Extended Period of Affordability**, begins at the end of the INITIAL Period of Affordability and continues for an additional 45 years or until such time as the loan is deemed paid in full.
- c. The Period of Affordability includes both the Initial and the Extended Periods of Affordability, for a total Period of Affordability of 60 years, without regard to 55 year term of the loan.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the Owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former Owner or any partner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the Project.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES (\$92.252))

- a. Owner shall ensure that the Project is occupied by households that are eligible as low-income families meeting the requirements of 24 C.F.R. 95.252 within six months of the date of the Project Completion Date.
- b. To ensure compliance with the HOME "Program Rule", at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 50% of the Median Income.
- c. **Very Low-HOME Units.** The HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- d. Increases in Tenant's Income:
 - i. Low-HOME rent units
 - 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of Median Income, but does not exceed 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income so increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits ("LIHTC") increase beyond the maximum applicable LIHTC rent for such unit.
 - 2. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
 - ii. High-HOME rent units
 - 1. The income of a tenant in a High-HOME rent unit can increase to 80% of Median Income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
 - 2. If the income of a tenant in a High-HOME rent unit rises above 80% of Median Income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of Median Income.
 - 3. The rent for the unit occupied by the tenant whose income has increased above 80% of Median Income will be set in accordance with subparagraph iii below.
 - iii. Project-based Rent Subsidy In accordance with 24 CFR 92.252 (a) (1,2) & (b)(1,2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
 - iv. Over-income Tenants In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:

1. In no event shall the tenant of a HOME-assisted unit that has been allocated LIHTCs be charged rent in excess of the maximum applicable LIHTC rent for such unit.
 2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.
- e. Certification and Recertification of Tenant Income: Owner must certify each tenant's household income initially, and must recertify such income annually in accordance with HOME regulations using the Section 8 (Part 5) income calculation.
 - f. The maximum monthly allowances for utilities and services, excluding telephone, are attached hereto as Exhibit E. These maximum monthly allowances are updated annually, and Owner is responsible for contacting County to ensure compliance with the maximum monthly allowance amounts.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS (§92.253)

- a. Owner shall adopt written tenant selection policies and criteria, which must be pre-approved by the County. The criteria must: (i) be consistent with the purpose of providing housing for very-low-income and low-income households, (ii) be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, (iii) provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and (iv) give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. Owner shall comply with all terms and conditions of 24 CFR 92.253, regardless of whether specified herein.
- d. In compliance with 24 CFR 92.253(d), neither the Owner nor General Partner may discriminate against rental assistance subsidy holders.
- e. Tenant leases may not contain any of the prohibited provisions set forth in 24 CFR 92.253 including, but not limited to:
 - i. Agreement by the tenant to be sued, to admit guilt, or to have a judgment entered in favor of Owner in a lawsuit brought in connection with the lease;
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties;
 - iii. Agreement by the tenant not to hold Owner or its agents legally responsible for any action or failure to act;
 - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Agreement by the tenant that Owner may evict tenant or household members without instituting a civil court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may, however, be obligated to pay costs and attorney fees if the tenant loses.
 - viii. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must

serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

12. Labor (§92.354)

If the Project involves construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds, Owner shall comply with the Davis–Bacon Act (40 U.S.C. 3141) and all regulations related to the same, and shall pay all laborers and mechanics employed in the development of any part of the housing not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis–Bacon Act (40 U.S.C. 3141). Owner shall further comply with the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

Owner shall comply with the Copeland “Anti-Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States), which are incorporated by reference into this Agreement. Owner shall include this clause in any contract with a contractor or subcontractor. A breach of the contract clause above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

13. Construction

If the Project involves construction such that it meets the definition of a federally assisted construction contract, the following shall apply:

During performance of this Agreement, Owner agrees as follows:

- a. Owner hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:
During the performance of this contract, the contractor agrees as follows:
 - (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
 - (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Owner agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

14. PROPERTY STANDARDS (§92.251)

- a. Owner shall comply with, and the Project must meet, all applicable property standards set forth in 24 CFR 92.251. Pursuant to 24 CFR 92.504(d), County staff will periodically inspect the Project during construction and after completion to assure compliance with the property standards set forth in 24 CFR 92.251.

- b. Upon Project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251.

15. INDEMNIFICATION AND INSURANCE

Owner agrees to indemnify, defend and hold harmless the County and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the County's sole negligence or intentional misconduct, arising from performance of this Agreement. This includes, but is not limited to, any and all claims by HUD for repayment as result of the funds dispersed hereunder being used for an ineligible purpose under the HOME Program, HOME Regulations, or applicable law, or because the Project does not meet requirements of the HOME Program, HOME Regulations, or other applicable law.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$2,000,000 per occurrence, \$4,000,000 aggregate, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this Agreement, and again upon request of the County. Owner shall give County no less than 30 days' notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

Owner shall diligently undertake to repair or restore the Project if damaged or destroyed, with such work commencing no later than 120 days after the damage or 30 days following receipt of the insurance proceeds and completed within one-year of the damage, and that the Owner is responsible to make up any insufficiency in insurance proceeds.

Article II of the Trust Deed shall control in the event that any part of or interest in the Project is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation")

16. EVENTS OF DEFAULT

An event of default under the Loan Documents includes, but is not limited to, the following; provided that the party declaring a default has first provided to the other party thirty days written notice at the address set forth in the Declaration (including a copy to U.S. Bancorp Community Development Corporation, a Minnesota corporation, and its successors and assigns (the "Limited Partner") and U.S. Bank National Association, a national banking association, and its successors and assigns (the "Senior Lender") , and Citibank, N.A., a national banking association, and its successors and assigns (the "Funding Lender") at the addresses set forth therein) specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30 day period, or during such longer period as is agreed to by the non-defaulting party in writing; provided that, in the event the Owner is diligently and continuously pursuing cure in good faith, the Owner shall be provided such length of time as is necessary to cure such default; except that such extended period shall not exceed ninety (90) days:

- Noncompliance with the term and conditions of the Loan Documents
- Bankruptcy
- Non-payment of judgments within 30 days
- Suspension of business
- Dissolution or liquidation of Owner
- Liens against the Project not paid in 60 days
- Construction abandoned for more than 15 days for cause not beyond reasonable control of developer
- Construction stopped by governmental authority or entitlement withdrawn or suspended
- Prohibited transfer, except as provided in the Declaration of Land Use Restrictive Covenants
- Material misrepresentation
- Noncompliance with the Affordability Requirements at any time during the Period of Affordability
- Default under other secured loans, foreclosure, bankruptcy, receivership and non-payment.
- Failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents.

The following shall also be an event of default under the Loan Documents:

- a. Securing all Funding. The Owner must secure all fund sources identified in **Attachment B**, as evidenced by a commitment letter or similar agreement, within 12 months from the Effective Date identified in Section 32.
 - b. Full Occupancy requirement. Within 18 months from the Project Completion Date, the Project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.
 - c. Noncompliance with the Affordability Requirements at any time during the term of this Agreement.
17. County agrees that any cure of any default made or tendered by Limited Partner, Funding Lender, and/or Senior Lender shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

18. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed, (iii) in accordance with 2 CFR 200.339, suspend or terminate this Agreement if Owner fails to materially comply with any term of this Agreement, (iv) permit the Agreement to be terminated in whole or in part in accordance with 2 CFR 200.339, (v) pursue any other remedy available at law, under contract, or in equity.
- b. The County and any tenant or applicant who meets the income limitation applicable under 24 CFR 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner and/or Recipient of its obligations under this Agreement in state court.

19. AFFIRMATIVE MARKETING (§92.351)

If the Project contains five or more HOME-Assisted Units, the Owner must comply with 24 CFR 92.351 and 24 CFR 253, and must implement and follow the adopted Affirmative Marketing Plan of the County, **Attachment F** (the "Plan"). Owner shall maintain records evidencing compliance with the Plan.

20. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Attachment F**.

21. NON-DISCRIMINATION (§92.350)

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in -
 - i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
 - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
 - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
 - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).

- b. Owner shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

22. DISBURSEMENT OF FUNDS

- a. County will disburse HOME funds when the following conditions are satisfied:
 - i. All the Loan Documents are signed;
 - ii. The Trust Deed and Declaration of Land Use Restrictive Covenants are signed and recorded; and
 - iii. The Owner has provided the County with the most recently available documentation that all sources of financing for the Project are committed or in the process of being committed. With the understanding that if leveraged dollars do not come through and HOME funds are used for pre-development expenses, the HOME funds must still be repaid.
- b. Draw Request
 - i. Owner agrees to complete and return a new vendor packet to set up payment location. This will be provided by the County, once the Loan Documents have been signed.
 - ii. Owner agrees to request funds under this Agreement only when they are needed for payment by Owner of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
 - iii. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
 - iv. Draw Documentation: Borrower shall initiate each request for a disbursement of HOME funds by delivering the following documentation to the County. Completed HOME disbursement Request Form (**Attachment H**) must be accompanied by detailed source documentation for actual expenses that reflected on payment request section of Disbursement Request Form.
 - v. Review of Draw Requests by County. The County will review each HOME disbursement Request Form packet that will be funded in whole or in part with HOME dollars. In the event that the County has any objection to any such draw request, County will provided notice via email to Owner within eight (8) business days after the date on which the County received the draw documentation with respect to such draw request and shall specify in detail the basis for each of the objections and requirements for correction of each such objection.
- c. Other Submittals and Approvals
 - i. Cost certification audit (this item should be submitted within 30 days of completion of construction and lease up, and is required to receive IRS Form 8609)
 - ii. Annual operating budget 60 days prior to beginning of the fiscal year for the Project
 - iii. Replacement reserve withdrawals within 30 days of such withdrawals.
 - iv. Operating reserve withdrawals within 30 days of such withdrawals.
 - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year
 - vi. Owner financial statements/audit, within 90 days of the end of their fiscal year (June 1st to July 30th).
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.
- f. HOME funds may be used for architectural, engineering, or related professional services to prepare plans, drawings, specifications, or work write-up. These costs are eligible if they were incurred not more than 24 months before the date that HOME funds are committed to the project.

23. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 24 CFR Part 24, the Owner must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

24. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

25. LEAD BASED PAINT AND HAZARDOUS MATERIALS (§92.355)

- a. For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner shall comply with the HUD Lead-Based Paint Regulations (24 C.F.R. 92.355, 24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC 4821 et. seq.) as amended requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.
- b. For purposes of this Section 23, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC ̄9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC ̄6901-6992. For the purposes of this Section 23, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law
- c. If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Project, the Property, or any improvements thereon in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property, the Project, or improvements thereon, County may require Owner to obtain or may itself obtain, at Owner's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Owner shall promptly provide to County a complete copy of any environmental assessment obtained by Owner.
- d. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Owner shall, within 30 days after written demand by County for Owner's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Owner including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Owner shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by the Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- e. Owner shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Owner's warranties in this Section 23, or the use, generation, manufacture, production,

storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, the Project, or any improvements thereon, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the Project, or any improvements thereon, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.

- f. To the best of Owner's knowledge, Owner represents and warrants to County that:
- i. Neither the Property (including the Project and any other improvement thereon) nor Owner is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - ii. Owner has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
 - iii. To the best of Owner's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.

All representations, warranties, and covenants in this Section 25 shall survive the satisfaction of Owner's payment obligations under the Loan Documents, the re-conveyance of the Property, or the foreclosure of the Trust Deed by any means.

26. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT (§92.353)

Owner shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601-4655).

27. CONFLICT OF INTEREST (§92.356)

Owner shall comply with all requirements set forth in 24 CFR 92.356. Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the Owner, developer or sponsor, may occupy a HOME-Assisted Unit in the Project. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

28. VAWA REQUIREMENTS (§ 92.359)

Owner shall comply with all requirements of the Violence Against Women Act (VAWA) set forth in 24 CFR part 5, subpart L and all other requirements set forth in 24 CFR § 92.359. VAWA notice and certification form is located in **Attachment I**.

29. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

30. RECORDS

1. Owner must keep such records described in 24 CFR 92.508 and any additional records as are necessary to demonstrate compliance with all parts of this Agreement including, but not limited to, the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination,

Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension, unit substitution and filling vacancies, financial and intergovernmental review.

2. Owner must annually provide tenant eligibility records to the County.

3. **Record Retention Periods**

- ii. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - iii. Owner shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iv. Written agreements must be retained for five years after the Agreement terminates.
 - v. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Project and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - vi. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- b. **Access to Records.** HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Recipient's and/or Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, Owner must assist, or must cause Owner to assist, the County by serving notice to affected tenants, as required under Oregon Law.

31. MONITORING

- a. Within 60 days of project completion and subject to the application of Section 27(d) above, the County staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor Project performance to ensure compliance with the requirements of this Agreement. During the initial Period of Affordability, the monitoring will be conducted in accordance with applicable law including, but not limited to, 24 CFR 92.251 and 24 CFR 92.504(d), and will include on-site inspections and a review of all records required in accordance with Section 30 above.

32. WAIVER

Failure by either party to enforce any right under this Agreement or any of the Loan Documents shall not be deemed to be a waiver of that right or of any other right.

33. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the heirs, successors, and assigns of each party, provided that written consent is obtained from the other party.

34. AUTHORITY TO SIGN

Each party signing this Agreement, and the other Loan Documents, represents that it has full power and authority to enter into this Agreement and all other documents contemplated thereby, and the persons signing this Agreement for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this Agreement, and to sell, transfer and convey all right, title, and interest in and to the Project in accordance with the Loan Documents. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

35. EFFECTIVE DATE AND TERM

The Effective Date of this Agreement is signed by both parties. This Agreement is effective through the Period of Affordability required under Section 9 of this Agreement.

36. ADDITIONAL TERMS AND CONDITIONS

- a. Program income: "program income," as defined under 24 CFR 92.2, shall be remitted to the County.
- b. Owner must comply with all applicable uniform administrative requirements as described in 24 CFR 92.505 or other applicable law.
- c. Owner shall carry out each activity under this Agreement in compliance with all applicable Federal laws and regulations described in subpart H of 24 CFR Part 92.
- d. Reversion of assets: upon expiration of this Agreement, Owner must transfer to County any HOME funds on hand at the time of expiration and any accounts receivable attributable to use of HOME funds.
- e. Repayment: any repayment or recapture of HOME funds must be remitted to the County.
- f. Fees: Owner shall not charge service, origination, or other fees for the costs of administering the HOME program, except as permitted by 24 CFR 92.214(b)(1).
- g. Owner shall comply with the project requirements of 24 CFR Part 92, Subpart F.
- h. Owner shall comply with all other applicable requirements and restrictions set forth in 24 CFR Part 92, whether or not specifically described herein.

37. COMPLIANCE AND FURTHER ASSURANCES. Owner shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Owner agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement and the other Loan Documents including, but not limited to, executing all additional documentation necessary for County to comply with applicable Federal requirements. All terms and conditions required under applicable federal law regarding the HOME Program and HOME Regulations are hereby incorporated by this reference herein.

38. GOVERNING LAW. This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Owner that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Owner, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

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

40. TIME IS OF THE ESSENCE. Owner agrees that time is of the essence in the performance this Agreement.

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

42. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

43. LIMITATION OF LIABILITIES. This Agreement and the other Loan Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and are contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

44. MERGER. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING

THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. OWNER, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT, AND OWNER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

PROJECT OWNER:

WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,
an Oregon limited partnership

By: HACC Webster Road, LLC
an Oregon limited liability company
Its: General Partner

By: Housing Authority of Clackamas County,
a public body corporate and politic of the
State of Oregon
Its: Member

CLACKAMAS COUNTY

Chair: Tootie Smith
Commissioner: Sonya Fischer
Commissioner: Mark Shull
Commissioner: Paul Savas
Commissioner: Martha Schrader

Date of Board of County Commissions meeting:

Signing on Behalf of BCC:

(signature)

Printed Name: Mr. Gary Schmidt
Title: County Administrator

Date

(signature)

Printed Name:
Title:

Date

Attachment A. Legal Description

Real property in the County of Clackamas , State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GLADSTONE, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING A PART OF THE FEN DAL CASON DONATION LAND CLAIM NO. 50, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, AT THE RE-ENTRANT CORNER BEING MARKED BY A 4 INCH DIAMETER BRASS DISK MARKED CLACKAMAS COUNTY SURVEYOR IN WEBSTER ROAD AS SHOWN ON SURVEY NUMBER 2006-454, CLACKAMAS COUNTY SURVEY RECORDS;

THENCE, ALONG SAID NORTH LINE OF SAID FENDAL CASON DONATION LAND CLAIM, SOUTH 87° 02'43" EAST, 253.32 FEET;

THENCE, LEAVING SAID NORTH LINE, SOUTH 04° 13'31" WEST, 28.32 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 85° 46'29" EAST, 20.00 FEET TO A 5/8 INCH IRON ROD; THENCE,

SOUTH 04° 13'37" WEST, 223.03 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 32°

00'73" WEST, 30.62 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 64° 01'4 6"

WEST, 35.71 FEET;

THENCE SOUTH 76° 53'57" WEST, 95.53 FEET TO A 5/8 INCH IRON ROD; THENCE

NORTH 77° 48 '24 " WEST, 58.22 FEET TO A 5/8 INCH IRON ROD;

THENCE, ON A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 38° 00 '36" (CHORD BEARS SOUTH 83° 11'18 " WEST 32.57 FEET) 33.17 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY LINE OF THE TRACT OF LAND CONVEYED TO CARL CAMPBELL, ET AL, RECORDED IN BOOK 680, PAGE 774, DEED RECORDS;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 64° 77'0 0 " WEST, 73.42 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 87° 32'34" WEST, 776.54 FEET TO THE CENTERLINE OF WEBSTER ROAD, AS EXISTING ON MARCH 23, 1966, FROM WHICH POINT A 7/2 INCH IRON ROD BEARS NORTH 87° 32'34" EAST 33.46 FEET;

THENCE, ALONG THE CENTERLINE OF SAID WEBSTER RD, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 776.76 FEET THROUGH A CENTRAL ANGLE OF 06° 02'78" {CHORD BEARS SOUTH 27° 70'07" WEST 75.44 FEET) 75.47 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, NORTH 24° 77'76" 275.64 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, ON A CURVE TO THE LEFT HAVING A RADIUS OF 337.04 FEET THROUGH A CENTRAL ANGLE OF 08° 34'48" (CHORD BEARS NORTH 79° 53'52" EAST 50.42 FEET) 50.47 FEET TO THE POINT OF BEGINNING.

Attachment B. Sources and Uses of Funds

Sources of funding for project: as of pro-forma data provided on 05/10/21

Source of Funding	Amount	Use of Funds summary (list proforma line item details for use and timing)
HOME	\$400,000	Development & Construction Costs
OHCS 4% LIHTC (Equity)	\$6,414,750	Development & Construction Costs & Const Loan Pay off
Metro Bond Funds (HACC)	\$2,939,209	Development & Construction Costs
PSH Capital Funds	\$2,400,000	Development & Construction Costs
TE Permanent loan	\$4,700,000	Post-construction
Seller Loan	\$1,770,056	Post-construction
GP/SLP Equity	\$100	Post-construction
Deferred Developer Fee	\$758,029	
Total Proposed Development Cost	\$19,382,143	

Attachment C. Schedule of Tasks

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed			8/3/2018
Site Acquisition			6/12/2019
Zoning Approval			5/19/2020
Site Analysis		5/2021	
Building Permits & Fees		5/2021	
Off-site Improvements		5/2021	
PRE-DEVELOPMENT			
Plans Completed (permit)			7/29/2020
Final Bids			4/8/2021
Contractor Selected			07/24/2020
FINANCING			
CONSTRUCTION LOAN:			
Proposal			11/2020
Firm Commitment (submittal)			12/17/2020
Closing/Funding of Loan		6/17/2021	
PERMANENT LOAN			
Proposal			12/2020
Firm Commitment			1/6/2021
Closing/funding of Loan		6/17/2021	
DEVELOPMENT			
Syndication Agreement			
** Construction Begins		6/18/2021	
Construction Completed		6/24/22	
Certificate Of Occupancy		6/23/22	
MARKETING			
Lease up begins		7/1/2022	
Lease up completed		10/1/2022	
Absorption (units per month)		24	
** Construction to start within twelve months of the agreement date			

Attachment D. Home Match Contribution Form

PROJECT: Webster Redevelopment

Total number of units in project: 48
Number of HOME-assisted units: 4
Applicable match credit percentage*: 12%

MATCH SOURCE*	ELIGIBLE MATCH TYPE	ELIGIBLE MATCH AMOUNT	MATCH CREDIT
METRO Affordable Housing Bond	5	\$4.3 million	21%
OHCS 4% LIHTC (Equity)	1	\$6.9 million	34%
TE Perm loan	1	\$5 million	25%
PSH Capital funds	1	\$2.4 million	11%
	Total match:	\$18.7 million	91%

Eligible forms of match as defined in 24 CFR 92.220(a):

- (1) Cash Contribution from Non-federal Source
- (2) Foregone Taxes, Fees and Charges
- (3) Donated Land or Other Real Property
- (4) On-site or Off-site Infrastructure
- (5) Proceeds from Affordable Housing Bonds
- (6) Donated Site Preparation and Construction Materials
- (7) Donated Site Preparation and Construction Equipment
- (8) Donated or Voluntary Labor or Professional Services
- (9) Sweat Equity (homeownership only)
- (10) Supportive Services (for rental projects only)

*24 CFR 92.219 states that 100% of the matching contribution can be recognized if "...at least 50 percent of the housing units in the project are HOME-assisted."

Attachment E. HOME Affordability Requirements

1. HOME Rent Schedule & Utility Allowance

Rent Schedule -

US Department of Housing and Urban Development
PMSA: Portland-Vancouver-Hillsboro, OR-WA MSA
Effective: June 1, 2021

	Low HOME	High HOME
0 Bedroom	\$846	\$1,080

Utility Allowance-

- Tenants do not pay utility allowances at the building as per their initial application.

Notes – throughout the Period of Affordability rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

2. HOME Tenant Income Limits

US Department of Housing and Urban Development
Effective: June 1, 2021

HOUSEHOLD SIZE	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$33,850	\$40,620	\$54,150
2 Person	\$38,700	\$46,440	\$61,900
3 Person	\$43,550	\$52,260	\$69,650
4 Person	\$48,350	\$58,020	\$77,350
5 Person	\$52,250	\$62,700	\$83,550
6 Person	\$56,100	\$67,320	\$89,750
7 Person	\$60,000	\$72,000	\$95,950
8 Person	\$63,850	\$76,620	\$102,150

All HUD data included in these tables are updated from time to time and Developer will need to make HUD adjustments.

ATTACHMENT F.

AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owner to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project Owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.

For outreach purposes, the Owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, County will assess the efforts of Owner through the use of certifications of compliance by the Owner or Property Manager. Thereafter, County will annually assess the efforts and the success of the affirmative marketing actions by the project Manager.

In the event Owner fails to comply with the affirmative marketing requirements, County will require corrective actions which include, but are not limited to, requiring the Owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. County may require other corrective actions as necessary.

**OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED
BUSINESSES ENTERPRISES (MBE/WBE)**

Clackamas County Community Development Division (CCCDD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, CCCDD will:
 - ◆ Encourage project sponsors, developers and Recipients to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. CCCDD may inspect the project site to confirm the percentage of minority and women laborers working at the site.
 - ◆ Monitor project sponsors, developers and Recipients to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

ATTACHMENT G.

1. **Monthly Progress Reports.**

During the construction phase, the Owner or its representative must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The Owner or its representative submits all of the following documentation:
 - i. Documentation that relocation (if any) was conducted in accordance with Section 24 of this Agreement;
 - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(2)(i);
 - iii. Certificate of Occupancy;
 - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget;
 - v. Documentation for each source of match;
 - vi. Contractor information:
 - (1) Copy of construction contract between Owner and General Contractor.
 - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - (3) Forms and Assurances from General Contractor:
 - (a) Affidavit of Payment of Debts and Claims;
 - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
 - (c) Consent of Surety Company to Final Payment (if bonded);
 - (d) Section 3 Summary Report (form HUD-60002); and
 - (e) Contractor/Subcontractor Activity form (form HUD-2516).
 - vii. Copy of the Management Agreement;
 - viii. Copy of HOME tenant lease;
 - ix. Copy of the written tenant selection criteria; and
 - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted.

ATTACHMENT H.

**REIMBURSEMENT FORM
HOME INVESTMENT PARTNERSHIPS
PROGRAM**

DATE:		PROJECT NAME:	
ORGANIZATION:		CONTACT:	
TELEPHONE:		E-MAIL:	

Payment Request:

Invoice # or Date	PAYABLE TO:	FOR SERVICES:	Relates to Proforma Line Item	AMOUNT:
TOTAL AMOUNT REQUESTED:				

Certification of Approval and Disbursement Authorization:

I/We hereby certify that the above information is correct and that the funds requested are for payment of actual expenditures. All contractors listed have performed work and supplied materials as stated. This certification shall not constitute an acceptance of defective work or improper materials, nor is it a waiver of the warranties or any other remedies I/we are or may be entitled to under the contract. **Invoice(s) are attached.**

Signature _____ Title _____ Date _____

County Approval: _____ **Amount Approved:** _____

Pamela Anderson, CD Manager

Date

ATTACHMENT I. VAWA NOTIFICATION AND CERTIFICATION

[Insert Name of Housing Provider¹]

Notice of Occupancy Rights under the Violence Against Women Act²

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.³ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that **[insert name of program or rental assistance]** is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under **[insert name of program or rental assistance]**, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under **[insert name of program or rental assistance]**, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or

¹ The notice uses HP for housing provider but the housing provider should insert its name where HP is used. HUD’s program-specific regulations identify the individual or entity responsible for providing the notice of occupancy rights.

² Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

occupancy rights under **[insert name of program or rental assistance]** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence,

dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

(2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP's emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HP can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

Confidentiality

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If HP can demonstrate the above, HP should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at **[insert Federal Register link]**.

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **[insert name of program or rental assistance contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact **[Insert contact information for relevant local organizations]**.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact **[Insert contact information for relevant organizations]**

Victims of stalking seeking help may contact **[Insert contact information for relevant organizations]**.

Attachment: Certification form HUD-5382 **[form approved for this program to be included]**

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

PROMISSORY NOTE

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Webster Road Project

\$400,000.00 _____, 2021

For value received, Webster Road Housing Limited Partnership, an Oregon limited partnership, ("Borrower"), promises to pay to the order of Clackamas County ("Lender"), the sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **zero percent (0.0 %) deferred payment per year, compounded annually**. The loan is evidenced by this Promissory Note the ("Note"), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, the "Loan Documents"). Unless otherwise defined herein, capitalized terms have the meaning assigned to them in the Loan Agreement.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of this Note and the Loan Agreement, the terms of the Loan Agreement shall control:

1. **Payment of Obligation**. Lender makes this loan for the development and construction of Webster Redevelopment (the "Project"), under Title II, Section 216 and 217 of the National Affordable Housing Act of 1990, and 24 CFR Part 92 (the "HOME" program).
 - a. The loan shall bear interest at a rate of **zero percent (0.0 %) deferred payment per year, compounded annually**.
 - b. The term of the loan is 55 years.
 - c. The Maturity Date is 55 years from the date on this Note shown above.
 - d. The loan shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Project, except as otherwise provided in the Declaration, or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents including, but not limited to, failure to record the Trust Deed or Declaration of Restrictive Covenants.
 - e. Payments shall be made at such place as Lender may designate in writing.
 - f. Payments of principal and interest shall be made until the loan is paid in full.
2. **Governing Law**. This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
3. **Security**. This Note shall be secured by a trust deed from Borrower as grantor to Lender as beneficiary in the Project.
4. **Nonrecourse**. Non-recourse Obligation. Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's general and limited partners, and the Lender's sole recourse with respect to the Loan shall be the right to foreclose under the Deed of Trust and other collateral forming part of the Loan Documents; provided that this provision shall not restrict any exceptions to non-recourse liability set forth in the Loan Documents, respecting such matters as fraud, waste and similar matters respecting actions of the general partner of Borrower.

If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

Dated _____, 2021

Borrower:

WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,
an Oregon limited partnership

By: HACC Webster Road, LLC
an Oregon limited liability company
Its: General Partner

By: Housing Authority of Clackamas County,
a public body corporate and politic of the State of Oregon
Its: Member

By: _____
Name: Gary Schmidt
Title: County Administrator, Clackamas County

AFTER RECORDING RETURN TO:
Clackamas County Community Development Division
2051 Kaen Road
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

DECLARATION OF LAND USE RESTRICTIVE COVENANTS

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Webster Road Project

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS ("**Declaration**") dated _____, 2021 by Webster Road Housing Limited Partnership, an Oregon limited partnership ("**Owner**") is given as a condition precedent to the award of HOME Investment Partnership ("**HOME**") Program funds by Clackamas County, a political subdivision of the State of Oregon ("**County**") together with any successor to its rights, duties, and obligations, and is made in favor of the Clackamas County, a political subdivision of the State of Oregon ("**County**"), who will administer compliance herunder for and on behalf of the County under the HOME Program.

Owner has applied to the County and entered into a HOME Loan Agreement ("**Agreement**") for an award to the Project in amounts not to exceed **\$400,000.00**. As used in this Declaration, "**Project**" shall mean the Owner's leasehold interest in the real property described in Exhibit A (the "**Property**"), attached herto and incorporated by this reference herein, and the improvements located on the Property (the "**Improvements**"). The Project, commonly known as "Webster Road, will consist of 48-units of affordable housing. Owner has a leasehold interest in the Property and is the owner of the Improvements located on the Property. The Property is owned by the Housing Authority of Clackamas County, a public body corporate and politic of the State of Oregon ("**HACC**").

Pursuant to the terms of the Agreement, Owner has agreed to restrictions regarding rents and tenant eligibility that Owner will maintain for the Period of Affordability specified in the Agreement. This Declaration is subject to the terms and conditions of the Agreement.

In consideration of the promises and covenants set forth below and of other valuable consideration, the receipt and sufficiency of which is acknowledged, the Owner and the County agree as follows:

SECTION 1 - DEFINITIONS

All the words and phrases used in this Declaration shall have the same meaning as when used in the Agreement and in 24 CFR 92 ("**HUD HOME Regulations**") unless the context requires otherwise.

SECTION 2 - RECORDING AND FILING; COVENANTS TO RUN WITH THE PROJECT

- (A) Promptly after this Declaration is signed by Owner and County, Owner shall record this Declaration and all amendments and file in the official public land deed records of Clackamas County, and shall pay all fees and charges incurred in connection therewith. Upon recording, the Owner shall immediately transmit to the County a signed original or certified copy of the recorded Declaration showing the date, deed book and page numbers of record.
- (B) The Owner intends, declares, and covenants, on behalf of itself, its successors, assigns, and all future owners and operators of the Project during the term of this Declaration, that this Declaration, and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Project: (1) shall be and are covenants running with the Project , encumbering the Project for the term of this Declaration, binding upon the Owner's successors in title and all subsequent Owners and Operators of the Project; (2) are not merely personal covenants of the Owner; and (3) shall bind the Owner (and the benefits shall inure to the County and any past, present or prospective tenant of the Project) and its respective successors and assigns during the term of this Declaration. The Owner agrees that any and all requirements of the laws of the State of Oregon to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the Project shall be deemed to be satisfied in full, and that any requirements of privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Project. For the term of this Declaration, each

and every contract, deed or other instrument hereafter signed conveying the Project or portion thereof shall expressly provide that such conveyance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter signed conveying the Project or portion thereof provides that such conveyance is subject to this Declaration.

- (C) The Owner covenants to obtain the consent of any prior recorded lienholder on the Project to this Declaration.

SECTION 3 - REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner represents, covenants, and warrants as follows:

- (A) The Owner (1) is qualified to transact business under the laws of the State of Oregon, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (3) has the full legal right, power and authority to sign and deliver this Declaration.
- (B) The execution and performance of this Declaration by the Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation, or any order of any court or other agency or governmental body, (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound, and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
- (C) The Owner has good and marketable title to the Improvements free and clear of any lien or encumbrance (subject to encumbrances created pursuant to this Declaration and any County-approved loan documents relating to the Improvements, as described in that certain Priority and Subordination Agreement of even date herewith by and between the County, Owner, HACC, the Senior Lender (as defined below), Citibank, N.A., a national banking association, and others, or other permitted encumbrances).
- (D) There is no action, suit, or proceeding at law or in equity, or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting it, or any of its properties or rights, which if adversely determined, would materially impair its right to carry on business substantially as now conducted (and as now contemplated by this Declaration) or would materially adversely affect its financial condition.
- (E) The Project constitutes or will constitute a qualified low-income building or qualified low-income project, as applicable, as defined in 24 CFR Part 92 and applicable regulations.
- (F) Owner shall maintain four units in the Project as HOME-Assisted Units during the term of this Declaration. Owner shall ensure the following requirements with respect to the HOME-Assisted Units are met during the term of this Declaration:
- 100% of the HOME-Assisted Units must be leased, rented or made available to members of the general public whose incomes are less than or equal to 50% of the median income (Very Low-Income as defined in the Agreement); for a total of 4 floating HOME units.
 - Rents for the HOME-Assisted Units will not exceed the gross rent allowable under 24 CFR 92.252(b)(1) except that, in accordance with 24 CFR 92.252(b)(2), "If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward the rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e. tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program."

The determination of whether a tenant meets the income requirement shall be made by the Owner or its designated agent at least annually in accordance with 24 CFR 92.252(h).

- (G) During the term of this Declaration, Owner will maintain the Project and each HOME-Assisted unit in accordance with the property standards requirements of 24 CFR 92.251.
- (H) Subject to the requirements of 24 CFR Part 92 and this Declaration, the Owner may sell, transfer or exchange the entire Project at any time, but the Owner shall notify in writing and obtain the prior agreement of any buyer or successor or other person acquiring the Project or any interest therein that such acquisition is subject to the requirements of this Declaration and to the requirements of 24 CFR Part 92 and applicable regulations. This provision shall not act to waive any other restriction on sale, transfer, or exchange of the Project or any low-income portion of the Project. The Owner agrees that the County may void any sale, transfer, or exchange of the Project if the buyer or successor or other person fails to assume in writing the requirements of this Declaration and the requirements of 24 CFR Part 92.

In addition, the withdrawal, or removal of the general partner of the Owner for cause pursuant to the terms of the Owner's Amended and Restated Agreement of Limited Partnership shall not constitute a default hereunder or under the Agreement, provided that the substitute general partner is reasonably acceptable to the County and is admitted to Owner within ninety days thereafter. In addition, the transfer of any interest of U.S. Bancorp Community Development Corporation, and its successors and assigns (the "**Limited Partner**"), as a limited partner interest in the Partnership and any interest in the Limited Partner, shall not constitute a default hereunder or under the Agreement or any of the Loan Document, notwithstanding anything to the contrary herein or therein.

- (I) The Owner will notify the County in writing prior to any sale, transfer, or exchange of the entire Project or any low-income portion of the Project.
- (J) The Owner shall not demolish any part of the Project, substantially subtract from any real or personal property of the Project, or permit the use of any residential rental unit for any purpose other than rental

housing during the term of this Declaration unless required by law or unless the County has given its prior written consent.

- (K) The Owner represents, warrants, and agrees that if the Project, or any part thereof, shall be damaged, destroyed, shall be condemned, or acquired for public use, the Owner will use its best efforts, subject to the rights of any mortgagee, to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration.
- (L) The Owner warrants that it has not and will not sign any other Declaration with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith except to the extent applicable law requires otherwise.

SECTION 4 - TERM OF DECLARATION

- (A) This Declaration applies immediately upon recordation, and Owner shall comply with all restrictive covenants contained herein during the term of this Declaration ("Terms of Affordability). The Terms of Affordability shall include an initial and extended period of affordability. The initial period of affordability shall be 15 years for all HOME units. The initial period of affordability begins on the Project completion date entered into HUD Integrated Disbursement and Information System (IDIS). The extended period of affordability begins at the end of the initial period of affordability and continues for an additional 45 years or until such time as the loan is deemed paid in full. The Terms of Affordability include both the initial and the extended periods of affordability, for a total of 60 years.
- (B) Pursuant to 24 CFR 92.252(e), as amended, this Declaration and the Terms of Affordability shall remain in effect for not less than the period described in section (A) above without regard to the term of the mortgage of other underlying security and without regard to any transfer of ownership; provided however, that the requirements herein, shall be terminated upon any foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original term, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Project.

SECTION 5 – COUNTY’S RIGHT TO INSPECT; OWNER’S OBLIGATION TO REPORT

- (A) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the County, to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income tenants which pertain to compliance with the County's Occupancy Restrictions specified in this Declaration.
- (B) The Owner shall submit any other information, documents, or certifications requested by the County which the County shall deem reasonably necessary to substantiate the Owner's continuing compliance with the provisions of the County's Occupancy Restrictions specified in this Declaration.

SECTION 6 - ENFORCEMENT OF 24 CFR 92 AFFORDABLE HOUSING AND INCOME TARGETING REQUIREMENTS

- (A) The Owner covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of 24 CFR Part 92, and applicable regulations, or the terms of this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of the County) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to Owner's obligations under 24 CFR Part 92 and affecting the Project.
- (B) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with restrictions provided in this Declaration is to assure compliance of the Project and the Owner with 24 CFR Part 92 and the applicable regulations, AND BY REASON THEREOF, THE OWNER, IN CONSIDERATION FOR RECEIVING HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDS FOR THIS PROJECT, AGREES AND CONSENTS THAT THE COUNTY AND ANY TENANT WHO MEETS THE INCOME LIMITATION APPLICABLE UNDER 24 CFR 92 (WHETHER PROSPECTIVE, PRESENT OR FORMER OCCUPANT) SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE COURT OF COMPETENT JURISDICTION. The Owner further specifically acknowledges that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
- (C) The Owner agrees that the representations and covenants set forth herein may be relied upon by the County and all persons interested in Project compliance under 24 CFR Part 92 and the applicable regulations.
- (D) The Owner agrees to take any and all actions reasonably required by the County to substantiate the Owner's compliance with occupancy restrictions of 24 CFR Part 92 as now constituted or subsequently amended and other occupancy restrictions of the County as now constituted or subsequently adopted.
- (E) This Declaration and the Agreement of which it is a part may be enforced by the County or its designee in the event the Owner fails to satisfy any of the requirements herein. In addition, this Declaration shall be deemed a contract enforceable by one or more Tenants as third-party beneficiaries of the Declaration and Agreement.

SECTION 7 - MISCELLANEOUS

- (A) Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
- (B) Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE COUNTY: Community Development Manager
Clackamas County Community Development
2051 Kaen Road, Oregon City, OR 97045

TO THE OWNER: Webster Road Housing Limited Partnership
13900 S. Gain Street
Oregon City, OR 97045

WITH A COPY TO THE LIMITED PARTNER:

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project Number: 27271
Attn.: Director of LIHTC Asset Management
Phone: (314) 335-2600

And:

Kutak Rock LLP
Jill Goldstein, Esq. 1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000
Fax: (402) 346-1148

WITH A COPY TO THE SENIOR LENDER:

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project Number: 27271
Attn.: Director of LIHTC Asset Management
Phone: (314) 335-2600

WITH A COPY TO THE FUNDING LENDER:

Citibank, N.A.
388 Greenwich Street, Trading 6th Floor
New York, New York 10013
Attention: Transaction and Asset Management Group
Re: Webster Road Apartments Deal ID No. 60000819
Facsimile: (212) 723-8209

With a copy to:

Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Webster Road Apartments Deal ID No. 60000819
Facsimile: (805) 557-0924

Prior to the Conversion
Date, with a copy to:

Citibank, N.A.
388 Greenwich Street, Trading 6th Floor
New York, New York 10013
Attention: Account Specialist
Re: Webster Road Apartments Deal ID No. 60000819
Facsimile: (212) 723-8209

Following the Conversion Date, with a copy to: Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: Webster Road Apartments Deal ID No. 60000819
Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A.
388 Greenwich Street, 17th Floor
New York, New York 10013
Attention: General Counsel's Office
Re: Webster Road Apartments Deal ID No. 60000819
Facsimile: (646) 291-5754

The County, Owner, Limited Partner, or U.S. Bank National Association, a national banking association, (the "Senior Lender"), or Citibank, N.A., a national banking association, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

- (C) Amendment. The Owner agrees that it will take all actions necessary to effect amendment of this Declaration as may be necessary to comply with 24 CFR Part 92, any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the HOME assistance. The County, together with Owner, may sign and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
- (D) Governing Law. This Declaration shall be governed by the laws of the State of Oregon, and, where applicable, the laws of the United States of America, without giving effect to the conflict of law provisions thereof.
- (E) Survival of Obligations. The obligations of the Owner as set forth herein and in the Application shall survive the reservation of HOME funds and shall not be deemed to terminate or merge with the awarding of the funds.

Owner has caused this Declaration to be signed by its duly authorized representatives, as of the day and year first written above.

(Signatures continued on next page)

OWNER:

WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,
an Oregon limited partnership

By: HACC Webster Road, LLC
an Oregon limited liability company
Its: General Partner

By: Housing Authority of Clackamas County,
a public body corporate and politic of the State of Oregon
Its: Member

By: _____
Name: Mr. Gary Schmidt
Title: County Administrator, Clackamas County

STATE OF OREGON)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by
Gary Schmidt, the County Administrator of Clackamas County.

Notary Public; State of OREGON
Print Name: _____
My Commission Expires: _____

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

Real property in the County of Clackamas , State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GLADSTONE, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING A PART OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, AT THE RE- ENTRANT CORNER BEING MARKED BY A 4 INCH DIAMETER BRASS DISK MARKED CLACKAMAS COUNTY SURVEYOR IN WEBSTER ROAD AS SHOWN ON SURVEY NUMBER 2006-454, CLACKAMAS COUNTY SURVEY RECORDS;

THENCE, ALONG SAID NORTH LINE OF SAID FENDAL CASON DONATION LAND CLAIM, SOUTH 87° 02'43" EAST, 253.32 FEET;

THENCE, LEAVING SAID NORTH LINE, SOUTH 04° 13'31" WEST, 28.32 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 85° 46'29" EAST, 20.00 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 04° 13'37" WEST, 223.03 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 32° 00'73" WEST, 30.62 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 64° 01'4 6" WEST, 35.71 FEET;

THENCE SOUTH 76° 53'57" WEST, 95.53 FEET TO A 5/8 INCH IRON ROD;

THENCE NORTH 77° 48 '24 " WEST, 58.22 FEET TO A 5/8 INCH IRON ROD;

THENCE, ON A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 38° 00 '36" (CHORD BEARS SOUTH 83° 11'18 " WEST 32.57 FEET) 33.17 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY LINE OF THE TRACT OF LAND CONVEYED TO CARL CAMPBELL, ET AL, RECORDED IN BOOK 680, PAGE 774, DEED RECORDS;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 64° 77'0 0 " WEST, 73.42 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 87° 32'34" WEST, 776.54 FEET TO THE CENTERLINE OF WEBSTER ROAD, AS EXISTING ON MARCH 23, 7966, FROM WHICH POINT A 7/2 INCH IRON ROD BEARS NORTH 87° 32'34" EAST 33.46 FEET;

THENCE, ALONG THE CENTERLINE OF SAID WEBSTER RD, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 776.76 FEET THROUGH A CENTRAL ANGLE OF 06° 02'78" {CHORD BEARS SOUTH 27° 70'07" WEST 75.44 FEET) 75.47 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, NORTH 24° 77'76" 275.64 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, ON A CURVE TO THE LEFT HAVING A RADIUS OF 337.04 FEET THROUGH A CENTRAL ANGLE OF 08° 34'48" (CHORD BEARS NORTH 79° 53'52" EAST 50.42 FEET) 50.47 FEET TO THE POINT OF BEGINNING.

AFTER RECORDING RETURN TO:
Clackamas County Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – Exhibit "A" Attached

TRUST DEED, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING
CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Webster Road Project

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of _____, 2021 by Webster Road Housing Limited Partnership, an Oregon limited partnership ("**Grantor**," "**Borrower**" or "**Owner**" having its office at 113900 S. Gain St., Oregon City, OR 97045, _____ ("**Trustee**" or "**Title Company**"), for the benefit of Clackamas County, a political subdivision of the State of Oregon, through its Community Development Division, having its office at 2051 Kaen Road, Oregon City, OR 97045 ("**Beneficiary**" or "**County**").

County has made a **zero percent (0.0%) interest deferred payment** loan to Borrower in the sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** under Title II of the National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq., and 24 CFR Part 92 (the "HOME" program). The loan is evidenced by this Trust Deed, a Promissory Note, a Loan Agreement and a Declaration of Land Use Restrictive Covenants (the "Declaration"), as they may be amended or supplemented from time to time, together referred to as the "**Loan Documents**." Capitalized terms have the meaning set forth in the Loan Agreement, except as otherwise defined in this Trust Deed. The purpose(s) of the loan are set forth in the Loan Agreement entered into between the parties.

The loan is due and payable in full at the earliest of: (i) the Maturity Date which is exactly **fifty-five (55) years from the executed date of this Trust Deed** except as otherwise provided in the Loan Agreement, (ii) the date the Property is sold, (iii) Owner's interest in the Property is transferred, except as allowed in the Declaration, or (iv) the Borrower defaults on any of its obligations under the Loan Documents (see Article 5.01 below). The initial HUD-required Period of Affordability shall be 15 years, without regard to the term of the loan or the transfer of ownership. The extended Period of Affordability shall be 45 years, without regard to the term of the loan or the transfer of ownership. The total Period of Affordability is sixty (60) years.

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record this Trust Deed.

For good consideration, receipt of which is acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company in trust for the benefit and security of the County, with power of sale and right of entry and possession, all of Borrower's right, title, and interest in and to its leasehold interest in the real property located in Clackamas County, Oregon, described as:

See **Exhibit A** attached hereto and incorporated herein,

Together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining, and the rents, issues and profits thereof, (the "**Property**"); together with all rights, titles and interests of Grantor, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "**Improvements**"). All of the above is sometimes referred to below as the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be re-conveyed.

BORROWER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

Particular Covenants and Warranties of Borrower

1.01 Obligations Secured. This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future (the "Obligations").

1.02 Property. Borrower warrants that within 180 days of execution of the document, it will hold good and merchantable title to the Improvements, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed in the Priority Agreement (as defined below). Borrower covenants that it shall forever defend County's and Title Company's rights under this Trust Deed against the adverse claims and demands of all persons.

1.03 [Reserved]

1.04 Further Assurances; Filing; Refiling; Etc.

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as County or Title Company may require to accomplish the purposes of this Trust Deed.
- 2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
- 3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

1.05 Compliance with Laws. Borrower represents, warrants, and covenants that:

- 1) The Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments, including the HOME requirements (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
- 2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

1.06 Definitions; Environmental Covenants; Warranties and Compliance

- 1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
- 2) For the purposes of this section, "Hazardous Substance" includes, without limitation, any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any federal, state, or local statute, ordinance, rule, regulation, or law.
- 3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.
- 4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 5) Borrower shall give prompt written notice to County of:
 - (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;
 - (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
 - (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or
 - (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.
- 6) Borrower shall promptly provide to County copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. County shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its attorney fees in connection with such an action paid by

Borrower, if County determines that such participation is reasonably necessary to protect its interest in the Trust Property.

- 7) If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to County a complete copy of any environmental assessment obtained by Borrower.
- 8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by County for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- 9) Borrower shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to County that:
 - (a) Neither the Property nor Borrower is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - (b) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
 - (c) To the best of Borrower's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- 11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the re-conveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without County's prior written consent; provided, however, that Borrower may remove, demolish, or materially alter such Improvements as become obsolete in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like value and quality. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, so that it continues to meet the property standards set forth in 24 CFR 92.251, and shall at County's election and Borrower's cost, restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below) pursuant to Sections 1.14 and 2.01, as applicable. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear accepted.

1.08 Liens; Other Financing. Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except as specifically provided in that certain Priority and Subordination Agreement of even date herewith, by and between the Owner, County, U.S. Bank National Association, a national banking association, Citibank, N.A., a national banking association, and others (the "**Priority Agreement**").

1.09 Impositions

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.

- 2) Borrower may, at its expense and after prior notice to County, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither County nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to County cash, corporate surety bond, or other additional security in the amount determined by County with respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final, non-appealable judgment.
- 3) Borrower shall furnish to County, promptly upon request, satisfactory evidence of the payment of all Impositions. County is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

1.10 Books and Records; Inspection of the Property. Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied, and in accordance with the record-keeping requirements of the Loan Agreement. Borrower shall permit Title Company, County, the Secretary of HUD and the Comptroller General of the U.S., and their authorized representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, all at such reasonable times during normal business hours with prior notice of not less than 48 hours, subject to all safety and security policies uniformly employed at the Property and rights of tenants in lawful possession.

1.11 Limitations of Use. Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions limiting or defining the uses that may be made of all or any part of the Property and the Improvements without the prior written consent of County.

1.12 Insurance

- 1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:
 - (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance;
 - (b) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to County, and in no event less than \$2,000,000 per occurrence and \$4,000,000 aggregate coverage; and
 - (c) Unless County otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property. In addition, Borrower shall obtain and maintain all such other insurance coverages, which at the time are commonly carried for similar property, in such amounts as County may require.
- 2) Insurance Companies and Policies. Insurer must be authorized to do business in Oregon. All insurance shall be written by a company or companies reasonably acceptable to County with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of County with loss proceeds under any policy payable to County, subject to the terms of this Trust Deed and the rights of any superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to County of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against County; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. County shall be named as additional insured on all liability policies. Borrower shall forward to County, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.
- 3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and County are insured under such policy in the proper designated amount.
- 4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

1.13 Assignments of Policies upon Foreclosure. In the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

1.14 Casualty/Loss Restoration

- 1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to County, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. County may make proof of loss if it is not made promptly and to County's satisfaction by Borrower.

- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, Borrower assigns to County all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements (subject to disbursement procedures established by County) if Borrower can demonstrate, to County's satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess insurance proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

1.15 Actions to Protect Trust Property; Reserves

- 1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, County may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that County shall first give notice to Borrower of such failure and a reasonable opportunity to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of County's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by County under this section shall impair any other right or remedy available to County or constitute a waiver of any default.
- 2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, County may require Borrower thereafter to pay and maintain with County reserves for payment of such obligations. In that event, Borrower shall pay to County each month a sum estimated by County to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency to County upon demand. The reserves may be commingled with County's other funds, and County shall not be required to pay interest to Borrower on such reserves. County shall not hold the reserve in trust for Borrower, and County shall not be the agent of Borrower for payment of the taxes and assessments required to be paid by Borrower.

1.16 Insurance Warning. Unless Borrower provides County with evidence of the insurance coverage required by the Loan Documents, County may purchase insurance at Borrower's expense to protect County's interest.

This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage County purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by County. The cost of this insurance may be added to Borrower's loan balance. If the cost is added to Borrower's loan balance, the interest rate of 8.0% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage County purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

1.17 Estoppel Certificates. Borrower, within five days of the request, shall furnish Title Company and County a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations.

1.18 Financial Information. Borrower shall furnish to County within (i) 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's internally-prepared financial statement for such year, and (ii) 180 days after the end of each of Borrower's fiscal years a copy of Borrower's annual audited or certified public accountant reviewed financial statements (including balance sheet, income statement, and statement of changes in financial position). Borrower shall promptly furnish to County any and all such other financial information as County shall reasonably request from time to time.

ARTICLE II Condemnation

2.01 Condemnation

- 1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to County.
- 2) Subject to the rights of any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, County shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at County's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the

Improvements (subject to reasonable disbursement procedures established by County) if Borrower can demonstrate, to County's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

ARTICLE III

Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Borrower assigns and transfers to County (1) all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party. This assignment is intended by Borrower and County to create a present and unconditional assignment to County subject only to the license set forth in Section 3.04 below.

3.02 Rights of County. Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, County shall have the right, power, and authority to:

- 1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to County and that all Rents are to be paid directly to County, whether or not County shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not County has taken possession of the Trust Property;
- 2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to County;
- 3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or County, with respect to any and all Leases and Rents; and
- 4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

3.03 Application of Receipts. County shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of County, and in collecting any Rents, including internal personnel costs; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after County shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, County shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as County shall determine. The exercise or failure by County to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

3.04 License. County grants to Borrower a revocable license to collect and receive the Rents. Such a license may be revoked by County, without further notice to Borrower, other than the notice required by Article 5.01, if Borrower defaults under Article III or any other term of the loan documents. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all Lease obligations;
- 2) To enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain County's prior written approval of the form and content of all future Leases.

Upon request of County, Borrower agrees:

- 1) To collect Rents no earlier than 30 days in advance of the day when they are due, and
- 2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

3.05 Limitation of County's Obligations. Notwithstanding the assignment provided for in this Article III, County shall not be obligated to perform or discharge, and County does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon County, or to make County responsible for any condition of the Property. County shall be accountable to Borrower only for the sums actually collected and received by County pursuant to this assignment. Borrower shall hold County fully harmless from, indemnify County for, and defend County against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against County on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the gross negligence or willful misconduct of County.

3.06 Termination. The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to County shall cease and terminate.

3.07 Attorney-in-Fact. Borrower irrevocably constitutes and appoints County, and each of its officers and agents, as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower.

ARTICLE IV

Security Agreement and Fixture Filing

4.01 Security. To secure the Obligations, Borrower grants to County a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed as a first priority real estate lien, subordinate only to those liens previously approved by the County; (2) all personal property that is used or will be used in the construction of any Improvements on the Trust Property; (3) all personal property that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of County from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

ARTICLE V

Events of Default; Remedies

5.01 Events of Default. Each of the following shall constitute an event of default under the Loan Documents; provided that the party declaring a default has first provided to the other party thirty days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that 30-day period, or during such longer period as is agreed to. Any such written notice and opportunity to cure provided to the **Borrower** must be provided to Housing Authority of Clackamas County and to U.S. Bancorp Community Development Corporation and its permitted successors and assigns (the "Limited Partner") at the address set forth in the Declaration. County agrees that any cure of any default made or tendered by the Limited Partner shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

- 1) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 2) Failure of Owner to comply with the Affordability Requirements at any time during the Period of Affordability.
- 3) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 4) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for HOME funds.
- 5) Other Default. The occurrence of any other event of default under the Loan Documents.
- 6) Cross-Defaults. Owner's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project, including but not limited to the documents which evidence the other sources of funds listed in the Loan Documents.
- 7) Bankruptcy. The occurrence of any of the following with respect to Owner or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) inability to pay debts when due; (f) any general assignment for the benefit of creditors; or (g) abandonment of the Trust Property.
- 8) Transfer. Any transfer not in compliance with the Declaration.

5.02 Remedies in Case of Default. If an Event of Default shall occur, subject to the terms of Section 16 of the Loan Agreement, County or Title Company may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- 1) **Extend Period of Affordability.** If Borrower fails to provide the required rents, fails to rent to eligible tenants, or fails to maintain the units according to applicable Property Standards, County may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** County may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** County may have a receiver appointed for the Trust Property. County shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or County shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at County's option and waives any and all defenses to such an appointment.
- 4) **Possession.** County may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as County shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish possession and control of the Trust Property to County or any receiver appointed under this Trust Deed.
- 5) **Rents.** County may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. County shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (5). If Rents are collected by County under this subsection(), Borrower irrevocably appoints County as Borrower's attorney-in-fact, with power of substitution, to endorse instruments

received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.

- 6) **Power of Sale.** County may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
- 7) **Foreclosure.** County may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of County, County may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Abandonment.** County may abandon all or any portion of the Trust Property by written notice to Borrower.

5.03 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as County may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including County, its elected officials, officers, agents, and employees, may purchase at any such sale. County and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, County and its officers may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to County or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of County, for such purpose.

5.04 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. An election by County to cure under Section 1.15 shall not constitute a waiver of the default or of any of the remedies provided in this Trust Deed. No delay or omission in exercising any right or remedy shall impair the full exercise of that or any other right or remedy or constitute a waiver of the default.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, County, or a receiver may:

- 1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
- 2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
- 3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
- 4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, County, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

5.06 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

- 1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
- 2) **Indebtedness.** To pay all Obligations, in such order as County shall determine in its sole discretion.
- 3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

5.07 Deficiency. No sale or other disposition of all or any part of the Trust Property pursuant to this Section 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

5.09 Continued LIHTC obligations. This Trust Deed shall to the extent provided below, be subordinate to such extended use agreements and/or land use restrictive covenants as may be recorded from time to time in favor of the State of Oregon acting by and through its Housing and Community Services Department with respect to the property. This subordination shall cease to be effective as of the earlier of (i) the date the property is acquired by foreclosure (or instrument in lieu of foreclosure), or (ii) upon the termination of the "extended use period," as defined in Section 42(h)(6)(D) of the Internal Revenue Code, as amended, or any successor provision (the "Code"), for such other reason

provided in Section 42(h)(6)(E) of the Code. Provided, however, a limitation on the eviction of existing low-income tenants, for the term and to the extent provided in Section 42(h) (6) (E) (ii) of the Code, shall survive such foreclosure or other termination of the extended use period applicable to the property. This subordination shall be interpreted to constitute a subordination of this Trust Deed, but only to the extent, necessary to meet the requirements established under Section 42(h)(6)(B) of the Code.

ARTICLE VI General Provisions

6.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

6.02 Re-conveyance by Title Company. At any time upon the request of County, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may re-convey, without warranty, all or any part of the Trust Property. The grantee in any re-conveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

6.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by hand, or mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth in the Declaration. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing; notices given by hand shall be deemed to have been given when actually received.

6.04 Substitute Trustee. In the event of dissolution or resignation of Title Company, County may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

6.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and County. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, County shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as County deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

6.06 Indemnity. Borrower shall hold County and Title Company and their respective elected officials, directors, officers, employees and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, arising out of or in connection with Title Company's or County's interest under this Trust Deed, except Borrower shall not be liable for acts performed by County or Title Company in violation of applicable law or resulting from the gross negligence or willful misconduct of County or Title Company.

6.07 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

6.08 Applicable Law. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

6.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

6.10 Rights of Prior Mortgagee. In the event that all or any portion of the Trust Property is subject to a superior mortgage or trust deed specifically permitted in the Priority and Subordination Agreement, the rights of County with respect to insurance and condemnation proceeds as provided in Sections 1.14 and 2.01, and all other rights granted under this Trust Deed that have also been granted to such a superior mortgagee or trust deed, shall be subject to the rights of the superior mortgagee or trust deed beneficiary. Borrower authorizes all such superior mortgagees and beneficiaries, on satisfaction of the indebtedness secured by their mortgage or trust deed, to remit all remaining insurance or Condemnation proceeds and all other sums held by them to County to be applied in accordance with this Trust Deed. In the event there is any inconsistency between the terms of this Trust Deed and the Priority and Subordination Agreement executed by Borrower, County, and certain other parties and recorded against the Property on or about the date of this Trust Deed, the terms of the Priority and Subordination Agreement shall control.

6.11 Person Defined. As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

6.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

6.13 Entire Agreement. This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

6.14 Commercial Property. Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

6.15 Standard for Discretion. In the event this Mortgage is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

6.16 ORS 93.040 Warning. 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 as of the date set forth above:

WEBSTER ROAD HOUSING LIMITED PARTNERSHIP,
an Oregon limited partnership

By: HACC Webster Road, LLC
an Oregon limited liability company
Its: General Partner

By: Housing Authority of Clackamas County,
a public body corporate and politic of the State of Oregon
Its: Member

By: _____
Name: Gary Schmidt
Title: County Administrator

STATE OF OREGON)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Gary Schmidt, the County Administrator of Clackamas County.

Notary Public; State of OREGON
Print Name: _____
My Commission Expires: _____

**EXHIBIT A
LEGAL DESCRIPTION**

Real property in the County of Clackamas , State of Oregon, described as follows:

A TRACT OF LAND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 17, TOWNSHIP 2 SOUTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GLADSTONE, IN THE COUNTY OF CLACKAMAS AND STATE OF OREGON, BEING A PART OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTH LINE OF THE FENDAL CASON DONATION LAND CLAIM NO. 50, AT THE RE- ENTRANT CORNER BEING MARKED BY A 4 INCH DIAMETER BRASS DISK MARKED CLACKAMAS COUNTY SURVEYOR IN WEBSTER ROAD AS SHOWN ON SURVEY NUMBER 2006-454, CLACKAMAS COUNTY SURVEY RECORDS;

THENCE, ALONG SAID NORTH LINE OF SAID FENDAL CASON DONATION LAND CLAIM, SOUTH 87° 02'43" EAST, 253.32 FEET;

THENCE, LEAVING SAID NORTH LINE, SOUTH 04° 13'31" WEST, 28.32 FEET TO A 5/8 INCH IRON ROD;
THENCE, SOUTH 85° 46'29" EAST, 20.00 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 04°

13'37" WEST, 223.03 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 32° 00'73" WEST,

30.62 FEET TO A 5/8 INCH IRON ROD; THENCE, SOUTH 64° 01'4 6" WEST, 35.71 FEET;

THENCE SOUTH 76° 53'57" WEST, 95.53 FEET TO A 5/8 INCH IRON ROD; THENCE NORTH 77°

48 '24 " WEST, 58.22 FEET TO A 5/8 INCH IRON ROD;

THENCE, ON A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET THROUGH A CENTRAL ANGLE OF 38° 00 '36" (CHORD BEARS SOUTH 83° 11'18 " WEST 32.57 FEET) 33.17 FEET TO A 5/8 INCH IRON ROD ON THE SOUTHERLY LINE OF THE TRACT OF LAND CONVEYED TO CARL CAMPBELL, ET AL, RECORDED IN BOOK 680, PAGE 774, DEED RECORDS;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 64° 77'0 0 " WEST, 73.42 FEET TO A 5/8 INCH IRON ROD;

THENCE, SOUTH 87° 32'34" WEST, 776.54 FEET TO THE CENTERLINE OF WEBSTER ROAD, AS EXISTING ON MARCH 23, 1966, FROM WHICH POINT A 7/2 INCH IRON ROD BEARS NORTH 87° 32'34" EAST 33.46 FEET;

THENCE, ALONG THE CENTERLINE OF SAID WEBSTER RD, BEING A CURVE TO THE RIGHT HAVING A RADIUS OF 776.76 FEET THROUGH A CENTRAL ANGLE OF 06° 02'78" {CHORD BEARS SOUTH 27° 70'07" WEST 75.44 FEET) 75.47 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, NORTH 24° 77'76" 275.64 FEET;

THENCE, CONTINUING ALONG THE CENTERLINE OF SAID WEBSTER ROAD, ON A CURVE TO THE LEFT HAVING A RADIUS OF 337.04 FEET THROUGH A CENTRAL ANGLE OF 08° 34'48" (CHORD BEARS NORTH 79° 53'52" EAST 50.42 FEET) 50.47 FEET TO THE POINT OF BEGINNING.

June 10, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #01 to an Agreement with CareOregon, Inc.
regarding Crisis Respite Services provided by Cascadia Behavioral Healthcare, Inc.

Purpose/Outcomes	Provision of and payment for Crisis Respite Services for Clackamas County clients.
Dollar Amount and Fiscal Impact	Up to \$364,270.00
Funding Source	No County General Funds are involved. Funding provided by State of Oregon, Oregon Health Authority
Duration	Effective January 1, 2021 and terminates December 31, 2021
Previous Board Action	None
Counsel Review	Reviewed and approved by Counsel April 7, 2021 (KR)
Procurement Review	Was this item reviewed by Procurement? No. CareOregon contracts with Cascadia for crisis respite services for Clackamas County. County is required to reimburse CareOregon for any beds utilized by Clackamas County general fund clients.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
Contract No.	#9970

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #01 to an Agreement with CareOregon, Inc. regarding Crisis Respite Services provided by Cascadia Behavioral Healthcare, Inc. CareOregon holds the contract with and compensates Cascadia for program services provided to Clackamas County clients. Maximum compensation to Cascadia, provided by CareOregon, shall not exceed \$910,675.00 (\$499 per bed x 5 beds x 365 days). County is responsible for reimbursing CareOregon for services provided to County general fund clients. Maximum reimbursement to CareOregon by County is limited to 2 beds at \$499 per bed for 365 days or \$364,270.00.

This Amendment is effective January 1, 2021 and terminates December 31, 2021.

RECOMMENDATION:

Staff recommends Board approval of this Amendment.

Healthy Families. Strong Communities.

Respectfully submitted,

*Mary Rowland for
Rodney A. Cook*

Rodney A. Cook, Interim Director
Health, Housing & Human Services Department

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9970	Division: BH	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Russell, Angela	<input type="checkbox"/> Revenue
	Program Contact: Rumbaugh, Mary	<input checked="" type="checkbox"/> Amend # 1 \$ \$364,270.00
		<input checked="" type="checkbox"/> Procurement Verified
		<input checked="" type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Thursday, June 10, 2021

CONTRACT WITH: CareOregon, Inc.

CONTRACT AMOUNT: \$364,270.00

TYPE OF CONTRACT

- | | |
|---|---|
| <input type="checkbox"/> Agency Service Contract | <input type="checkbox"/> Memo of Understanding/Agreement |
| <input type="checkbox"/> Construction Agreement | <input checked="" type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off |

DATE RANGE

- | | |
|--|--|
| <input checked="" type="checkbox"/> Full Fiscal Year _____ | <input type="checkbox"/> 4 or 5 Year _____ |
| <input type="checkbox"/> Upon Signature _____ | <input type="checkbox"/> Biennium _____ |
| <input type="checkbox"/> Other _____ | <input checked="" type="checkbox"/> Retroactive Request? 1/1/2021 - 12/31/2021 |

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived

If no, explain why:

Business Automobile Liability: Yes No, not applicable No, waived

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Rastetter, Kathleen _____ Date Approved: Wednesday, April 7, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

FIRST AMENDMENT

To The

AGREEMENT

Between

CAREOREGON, INC.,

and

CLACKAMAS COUNTY

This is the 1st Amendment to the Agreement (Agreement) that was effective January 1, 2021 to December 31, 2021 between CareOregon, Inc. (CareOregon) and Clackamas County (Provider).

CareOregon and Provider agree that the Agreement between the parties be amended as follows:

1. Agreement, Cascadia Behavioral Healthcare, Tigard Crisis Respite Program effective January 1, 2021 to December 31, 2021 is hereby replaced with Agreement, Cascadia Behavioral Healthcare, Tigard Crisis Respite Program effective January 1, 2021 to December 31, 2021.

IN WITNESS WHEREOF, the parties have executed the terms of this Amendment to be effective on **January 1, 2021 to December 31, 2021**. All other terms and conditions of the Agreement shall remain in full force and effect.

[signatures on following page]

Agreed to on behalf of CareOregon, Inc:

Agreed to on behalf of Clackamas County:

Signature: _____

Signature: _____

Name: Eric C. Hunter

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____

Agreement
Cascadia Behavioral Healthcare, Tigard Crisis Respite Program

This Agreement (Agreement) is between CareOregon, Inc. (CareOregon) and Clackamas County (Provider) for the time period of January 1, 2021 to December 31, 2021.

Project: Cascadia Crisis Respite
Provider Contact: Elise Thompson
Email: ethompson@clackamas.us and
BHContracts@calckamas.us

CareOregon Contact: Jill Archer
Email: providercontracts@careoregon.org

I. RECITALS

- A. CareOregon, Clackamas County (County) and Cascadia Behavioral Healthcare are independent entities.
- B. Both parties acknowledge this program and its funding is separate from any of CareOregon's other funding programs.
- C. This Agreement shall be applicable for the time period between January 1, 2021 and December 31, 2021.

II. PURPOSE

CareOregon has been delegated the responsibility of maintaining a contract with Cascadia Behavioral Healthcare's Tigard Respite program which includes the provision of respite service for members enrolled with Clackamas County's General Fund and safety net services. Both parties agree that Clackamas County shall be responsible for payment of respite services provided to Clackamas County General Funds members and that CareOregon shall be responsible for payment of respite services to CareOregon/Health Share Members.

III. TERMS

For the time period between January 1, 2021 and December 31, 2021:

- A. Cascadia Behavioral Healthcare agrees to submit invoices directly to CareOregon at \$499.00 per bed per day (up to five beds for 365 days from January 1, 2021 to December 31, 2021) as utilized by members enrolled with Clackamas County's General Fund and safety net services.
- B. CareOregon agrees to reimburse Cascadia Behavioral Healthcare for crisis respite services utilized by Clackamas County members eligible for General Fund and safety net services.
- C. Clackamas County agrees to reimburse CareOregon for crisis respite services utilized by ~~CareOregon Members~~ their members eligible for General Fund and safety net services. CareOregon is responsible for contacting Clackamas County regard invoicing procedures and timelines.

- D. Total payments for the term of this ~~LOA Agreement to Cascadia Behavioral Healthcare~~ CareOregon shall not exceed the funding amount of ~~\$364,270.00~~ \$10,675.00 for ~~25~~ beds from January 1, 2021 to December 31, 2021.
- E. Both parties agree these payments are for the period outlined above only and does not imply or guarantee ongoing funding.
- F. Per the terms of Cascadia Behavioral Healthcare's Provider Participation with CareOregon, CareOregon shall reimburse Cascadia Behavioral Healthcare for any unused and/or unreimbursed beds by either party. The maximum beds reimbursed will be up to five beds from January 1, 2021 to December 31, 2021.
- G. Either party can terminate this Agreement with 30 days written notice.

IV. GENERAL PROVISIONS

- A. Should Cascadia Behavioral Healthcare's Provider Participation Agreement with CareOregon terminate, this Agreement will cease immediately upon written notification to Clackamas County.
- B. Clackamas County agrees that Provider Contact named above is responsible for coordinating all aspects of the Agreement, including obtaining all necessary data and information, and notifying CareOregon of any delays.
- C. Both parties agree to seek written approval for, and provide a copy of, any news releases or another external communication related to the Agreement.
- D. Clackamas County agrees to uphold all confidentiality provisions of the Agreement between CareOregon and Clackamas County, and specifically safeguard the health information of Members as it applies to activities related to this program.
- E. CareOregon can terminate the agreement immediately if the safety or health of a member or staff person is threatened.
- F. Clackamas County is not eligible to participate or receive funding associated with this Agreement if Clackamas County is placed on the Tier Monitoring System by CareOregon's Peer Review Committee or has documented contract and/or compliance issues. All funding associated with this Agreement will be discontinued until Clackamas County is removed from the CareOregon Tier Monitoring System or has resolved compliance issue to CareOregon's satisfaction. Discontinued funding will not be dispersed.
- G. The Agreement is expressly subject to the debt limitation of the County set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- H. CareOregon shall pay all taxes owed to a public body, as defined in ORS 174.109, and attests to compliance with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620, and ORS Chapters 316, 317 and 318. CareOregon will continue to comply with the tax laws of this state or a political subdivision of the state during the term of this contract. Failure to comply with this contract term is a default for which the County may terminate the contract and seek damages and other relief available.
- I. This Agreement shall be governed and construed in accordance with the laws of the State

of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and CareOregon that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- J. CareOregon agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of CareOregon or CareOregon's employees or agents. Any obligation of the County to indemnify, hold harmless and defend CareOregon, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.
- K. No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Agreement waiving a right to a jury trial or requiring binding arbitration are void.
- L. The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

June 10, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment #01 to Subrecipient Agreement with Cascadia Behavioral
Healthcare, Inc. for Residential Treatment Services

Purpose/Outcomes	To provide residential treatment services to Clackamas County clients.
Dollar Amount and Fiscal Impact	Amendment adds \$12,228.00 to contract value. New maximum contract value is \$334,894.00.
Funding Source	No County General Funds are involved. State of Oregon, Community Mental Health Program (CMHP) funds are utilized.
Duration	Effective upon signature and terminates on June 30, 2021.
Previous Board Action	Agreement reviewed and approved by Board November 5, 2020.
Counsel Review	Review by Counsel April 26, 2021 (AN)
Procurement Review	Was this item reviewed by Procurement? No Not required for subrecipient agreements.
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division – 503-742-5305
Agreement No.	#9390 (#20-036)

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #01 to Subrecipient Agreement with Cascadia Behavioral Healthcare, Inc. for residential treatment services to Clackamas County clients. Cascadia provides these services at three facilities in Clackamas County, and works collaboratively with the County on process including treatment planning, admission and discharge authorizations and referrals for clients to specialty behavioral health services. Amendment #01 adds funding to the Agreement for a Clackamas County and Cascadia Behavioral Healthcare client residing at a facility not operated by Cascadia. These funds will be provided by Cascadia to the facility where the client resides, Golden Acres Retirement Center.

Cascadia Behavioral Healthcare, Inc. is a not-for-profit agency that delivers whole health care – integrated mental health and addiction services, primary care, and housing – to promote and support the well-being of the communities served. For more than thirty-five years, Cascadia

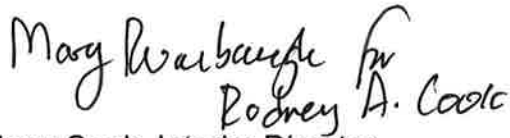
has been the community health and housing safety net provider for Oregonians of all ages experiencing mental health and addiction challenges, trauma, poverty, and homelessness.

This Amendment adds \$12,228.00 to the value of the Agreement, increasing the maximum agreement value to \$334,894.00.

RECOMMENDATION:

Staff recommends Board approval of the Amendment.

Respectfully submitted,

Handwritten signature in cursive script that reads "Mary Warburton for Rodney A. Cook".

Rodney Cook, Interim Director
Health, Housing and Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9390	Division: BH	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Russell, Angela	<input type="checkbox"/> Revenue
	Program Contact: Thompson, Elise	<input checked="" type="checkbox"/> Amend # 1 \$ \$12,228.00
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** Thursday, June 10, 2021

CONTRACT WITH: Cascadia Behavioral Healthcare, Inc.^

CONTRACT AMOUNT: \$334,894.00

TYPE OF CONTRACT

- | | |
|---|--|
| <input type="checkbox"/> Agency Service Contract | <input type="checkbox"/> Memo of Understanding/Agreement |
| <input type="checkbox"/> Construction Agreement | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off |

DATE RANGE

- | | |
|--|---|
| <input type="checkbox"/> Full Fiscal Year _____ | <input type="checkbox"/> 4 or 5 Year _____ |
| <input checked="" type="checkbox"/> Upon Signature _____ 6/30/2021 | <input type="checkbox"/> Biennium _____ |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Retroactive Request? _____ |

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived

If no, explain why:

Business Automobile Liability: Yes No, not applicable No, waived

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Naylor, Andrew Date Approved: Monday, April 26, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

Subrecipient Amendment

Subrecipient Agreement Number: 20-036 (BH 9390)

Board Order Number:

Department/Division: H3S/Behavioral Health

Amendment No. 01

Subrecipient: Cascadia Behavioral Healthcare, Inc.

Amendment Requested By: Mary Rumbaugh

Changes: Scope of Service
 Agreement Time

Agreement Budget
 Other: Update reporting contact

Justification for Amendment:

This Subrecipient Agreement provides for residential treatment services to Clackamas County clients.

Amendment #01 adds funding to the Agreement for Clackamas County and Cascadia Behavioral Health client residing at a facility not operated by Cascadia. These funds will be provided by Cascadia to the facility where the client resides, Golden Acres Retirement Center.

This Amendment also updates the reporting contact for the Behavioral Health Division.

Maximum compensation is **increased by \$12,228.00** to a revised value of **\$334,894.00**. This amendment is effective **upon signature** and continues through **June 30, 2021**.

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

AMEND Agreement Section 4:

4. **Grant Funds.** COUNTY's funding for this Agreement is the 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159). The maximum, not to exceed, grant amount COUNTY will pay is **\$322,666.00**. This is a rate-based agreement and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Performance Measures and Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
- 4.1. **Federal Funds: \$72,000.00** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) (CFDA 93.958) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Community Mental Health Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
- 4.2. **Other Funds: \$250,666.00** in State funds are provided for funding of other items in the program budget.

TO READ:

4. **Grant Funds.** COUNTY's funding for this Agreement is the 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159). The maximum, not to exceed, grant amount COUNTY will pay is **\$334,894.00**. This is a rate-based agreement and disbursements will be made in accordance with the schedule and requirements contained in **Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Performance Measures and Reporting**. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding for this Agreement is from the following sources:
- 4.1. **Federal Funds: \$72,000.00** in federal funds are provided through the Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services (Agreement No. 159159) (CFDA 93.958) issued to COUNTY by the State of Oregon acting by and through its OHA. The State of Oregon receives funds through the Community Mental Health Block Grant from the U.S. Department of Health and Human Services, Office of Substance Abuse and Mental Health Services Administration.
- 4.2. **Other Funds: \$262,894.00** in State funds are provided for funding of other items in the program budget.

AMEND Agreement Section 12 (b), Indemnification:

b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

To the extent permitted by applicable law, SUBRECIPIENT shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon, the Oregon Health Authority, COUNTY, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever

resulting from, arising out of or relating to the operations of SUBRECIPIENT, including but not limited to the activities of SUBRECIPIENT or its officers, employees, subcontractors or agents under this AGREEMENT.

Subrecipients that are not units of local government as defined in ORS 190.003, shall 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 SUBRECIPIENT or any of the officers, agents, employees or subcontractors of SUBRECIPIENT ("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 SUBRECIPIENT from and against any and all Claims.

To Read:

- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to **(1) SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control; or (2) SUBRECIPIENT's breach of this Agreement including, but not limited to, any claims by the State of Oregon regarding misuse of grant funds provided under this Agreement.**

SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.

To the extent permitted by applicable law, SUBRECIPIENT shall defend (in the case of the state of Oregon and the Oregon Health Authority, subject to ORS Chapter 180), save and hold harmless the State of Oregon, the Oregon Health Authority, COUNTY, and their officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the operations of SUBRECIPIENT, including but not limited to the activities of SUBRECIPIENT or its officers, employees, subcontractors or agents under this Agreement.

Subrecipients that are not units of local government as defined in ORS 190.003, shall 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 SUBRECIPIENT or any of the officers, agents, employees or subcontractors of SUBRECIPIENT ("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 SUBRECIPIENT from and against any and all Claims.

AMEND TO ADD to Exhibit A, Subrecipient Scope of Work:

6. Additional Requirements

Subject to the terms and conditions of this Agreement, SUBRECIPIENT may use grant funds to compensate for residential housing services provided to SUBRECIPIENT's clients. Such compensation must be at the applicable state rate, and only to the extent permitted by applicable law. Such compensation shall only be for housing, and not for any mental health or other medical treatment services.

AMEND Exhibit B, Subrecipient Program Budget:

SERVICE ELEMENT	NOT TO EXCEED VALUE
MHS 20 – Federal Funds	\$72,000.00
MHS 28 – State Funds	\$250,666.00
TOTAL	\$322,666.00

TO READ:

SERVICE ELEMENT	NOT TO EXCEED VALUE
MHS 20 – Federal Funds	\$72,000.00
MHS 28 – State Funds	\$262,894.00
TOTAL	\$334,894.00

AMEND Section 4 of Exhibit D, Required Financial Reporting and Reimbursement Request:

4. Request for Reimbursement shall be submitted electronically to:

BHAP@clackamas.us, NBenner@clackamas.us, and MWestbrook@clackamas.us

Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

TO READ:

4. Request for Reimbursement shall be submitted electronically to:

BHAP@clackamas.us, JThomas@clackamas.us, and MWestbrook@clackamas.us

Invoices are subject to the review and approval of the Program Manager and Grant Accountant. Payment is contingent on compliance with all terms and conditions of this Agreement, including reporting requirements.

AMEND Incident Reporting Section of Exhibit E, Reporting:

INCIDENT REPORTING

Clackamas County BHD defines a reportable incident as an event in which an individual is believed to have been abused, endangered, or significantly harmed. A reportable incident may include, but is not limited to, any serious incident that presents a risk to health and safety and may be a result of staff action or inaction, incidents between individuals, incidents that occur on passes, or incidents of self-harm where medical attention is necessary. Any such incident involving a client that occurs on SUBRECIPIENT's premise, with SUBRECIPIENT staff, or during the course of treatment by SUBRECIPIENT must be reported.

Examples of reportable incidents include:

- Seclusion and/or restraint resulting in physical injury
- Runaway from program or while on pass
- Medication error, which a reasonable person would conclude might have resulted in a death, serious injury or hospitalization. {Notes: Medication non-compliance does not have to be reported

unless there is a resulting reportable event; medications missed while hospitalized does not have to be reported}

- **Severe property damage**
- **Serious injury resulting in medical attention**
- **Significant suicide attempt resulting in medical attention**
- **Death of a client/resident**
- **Death or serious injury of another individual caused by the client/resident**
- **Physical attack on another individual resulting in a physical injury**
- **Mandatory reporting event**
- **Allegation of abuse by program staff {See OAR 407-045-0290(5)}**

Procedure

- 1) **Items above in bold, italicized lettering require immediate notification to COUNTY Program Supervisor when such an incident occurs.**
- 2) SUBRECIPIENT shall send via secure email a copy of the incident report with twenty-four (24) hours, using the following address:

Secure email: NBenner@clackamas.us

- 3) Be advised that submitting an incident report **does not fulfill abuse reporting obligations**. Depending on the nature of the incident, an abuse report may also be required per the Abuse Reporting requirement noted above and in this Agreement. In the event of a death in which there is reasonable cause to believe that an adult has died as a result of abuse, the provider must also:
 - A. **Notify OHA/Addictions and Mental Health Division of the incident (855-503-SAFE).**
 - B. **Report the death to Clackamas County's Mental Health Abuse Investigators at (503) 650-3000.** The State of Oregon, Addictions and Mental Health Division requires Clackamas County Adult Protective Service Investigators to investigate any death of a client receiving mental health services.
 - C. **Submit evidence to the Clackamas County Adult Protective Service Investigator that the report has been made by sending, via secure email, a copy of the confirmed fax which notified the Division of the reportable incident. The report is to be sent to the email address above.**

TO READ:

INCIDENT REPORTING

Clackamas County BHD defines a reportable incident as an event in which an individual is believed to have been abused, endangered, or significantly harmed. A reportable incident may include, but is not limited to, any serious incident that presents a risk to health and safety and may be a result of staff action or inaction, incidents between individuals, incidents that occur on passes, or incidents of self-harm where medical attention is necessary. Any such incident involving a client that occurs on SUBRECIPIENT's premise, with SUBRECIPIENT staff, or during the course of treatment by SUBRECIPIENT must be reported.

Examples of reportable incidents include:

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- Runaway from program or while on pass
- Medication error, which a reasonable person would conclude might have resulted in a death, serious injury or hospitalization. {Notes: Medication non-compliance does not have to be reported unless there is a resulting reportable event; medications missed while hospitalized does not have to be reported}
- **Severe property damage**
- **Serious injury resulting in medical attention**
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- **Allegation of abuse by program staff {See OAR 407-045-0290(5)}**

Procedure

- 4) **Items above in bold, italicized lettering require immediate notification to COUNTY Program Supervisor when such an incident occurs.**
- 5) SUBRECIPIENT shall send via secure email a copy of the incident report with twenty-four (24) hours, using the following address:

Secure email: JThomas@clackamas.us

- 6) Be advised that submitting an incident report **does not fulfill abuse reporting obligations**. Depending on the nature of the incident, an abuse report may also be required per the Abuse Reporting requirement noted above and in this Agreement. In the event of a death in which there is reasonable cause to believe that an adult has died as a result of abuse, the provider must also:
 - A. Notify OHA/Addictions and Mental Health Division of the incident **(855-503-SAFE)**.
 - B. Report the death to Clackamas County's Mental Health Abuse Investigators at **(503) 650-3000**. The State of Oregon, Addictions and Mental Health Division requires Clackamas County Adult Protective Service Investigators to investigate any death of a client receiving mental health services.
 - C. Submit evidence to the Clackamas County Adult Protective Service Investigator that the report has been made by sending, via secure email, a copy of the confirmed fax which notified the Division of the reportable incident. The report is to be sent to the email address above.

SIGNATURE PAGE

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

**CASCADIA BEHAVIORAL HEALTHCARE,
INC.**

**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

Derald Walker 4/27/2021
Authorized Signature Date

- Commissioner: Tootie Smith, Chair
- Commissioner: Sonya Fischer
- Commissioner: Paul Savas
- Commissioner: Martha Schrader
- Commissioner: Mark Shull

Derald Walker, PhD / President-CEO
Name / Title (Printed)

Signing on behalf of the Board:

Richard Swift, Director Date
Health, Housing and Human Services

Approved as to form:

County Counsel Date

June 10, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #02 to a Contract with Lines for Life for Crisis Line Services

Purpose/Outcomes	Contractor provides behavioral health crisis line intervention and triage call coverage services.
Dollar Amount and Fiscal Impact	Amendment adds \$34,151; increasing the contract maximum value to \$167,351.
Funding Source	No County General Funds are involved. Funding provided through Oregon Health Plan (OHP).
Duration	Effective July 1, 2021 through September 30, 2021.
Previous Board Action	No previous Board action. County Administrator reviewed and approved Amendment #01 January 7, 2021.
Counsel Review	Reviewed and approved May 17, 2021 (KR)
Procurement Review	Was this item reviewed by Procurement? No. This Amendment extends the term of the Contract to allow for the completion of a formal procurement process for these services.
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	9710

BACKGROUND:

The Behavioral Health Division (BHD) of the Health, Housing & Human Services Department (H3S) requests the approval of Amendment #02 to Contract #9710 with Lines for Life for behavioral health crisis line intervention and triage call coverage services.

Lines for Life is a regional non-profit dedicated to preventing substance abuse and suicide. Offering help and hope to individuals and communities, and promoting mental health for all. Through education, training, and advocacy Lines for Life strives to prevent issues of substance abuse, mental illness, and thoughts of suicide to reach crisis levels.

This Amendment, reviewed and approved by County Counsel on date, extends the term of the Contract three (3) months to allow for the completion of a formal procurement (Request for Proposals) for these services. The Amendment will ensure that there is no gap in services prior to a new contract being issued. This Amendment is effective July 1, 2020 and terminates on September 30, 2021, and adds \$34,151, increasing the Contract's maximum value to \$167,351.

Healthy Families. Strong Communities.

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

Clackamas.us/h3s

RECOMMENDATION:

Staff recommends approval of this Amendment.

Respectfully submitted,

*Mary W. Wainwright for
Rodney A. Cook*

Rodney Cook, Interim Director
Health, Housing & Human Services Department

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9710

Board Order #:

Division: BH
Contact: Russell, Angela
Program Contact:
Anderson, Jeffrey

Subrecipient
 Revenue
 Amend # 2 \$ \$34,151.00
 Procurement Verified
 Aggregate Total Verified

Non BCC Item BCC Agenda Date: Thursday, June 10, 2021

CONTRACT WITH: Lines for Life

CONTRACT AMOUNT: \$167,351.00

TYPE OF CONTRACT

- | | |
|---|---|
| <input type="checkbox"/> Agency Service Contract | <input type="checkbox"/> Memo of Understanding/Agreement |
| <input type="checkbox"/> Construction Agreement | <input checked="" type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off |

DATE RANGE

- | | |
|--|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____ |
| <input type="checkbox"/> Upon Signature _____ - _____ | <input type="checkbox"/> Biennium _____ - _____ |
| <input checked="" type="checkbox"/> Other 7/1/2021 - 9/30/2021 | <input type="checkbox"/> Retroactive Request? _____ - _____ |

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived

If no, explain why:

Business Automobile Liability: Yes No, not applicable No, waived

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by: Rastetter, Kathleen Date Approved: Monday, May 17, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____
Date Signed: _____
Date Sent: _____

Contract Amendment #02
Clackamas County, acting through its Health, Housing, and Human Services Department,
Behavioral Health Division

H3S Contract Number: 9710 Board Agenda Number: _____

and Board date: _____

Division: Behavioral Health

Amendment No. 02

Contractor: Lines for Life

Amendment Requested By: Mary Rumbaugh, Director, Behavioral Health Division

Changes: Scope of Services Contract Budget/Compensation
 Contract Term Other _____

This Amendment #02 is entered into between Lines for Life (“Contractor”), and Clackamas County, acting through its Health, Housing and Human Services Department, Behavioral Health Division (“County”) and shall become part of the contract entered into between both parties on July 17, 2020 (“Contract”), as amended.

Justification for Amendment:

This Contract provides behavioral health crisis line intervention and triage call coverage services.

This Amendment #02 **extends the contract term through September 30, 2021**, and **adds \$34,151.00** to the value of the Contract. The new maximum contract value is \$167,351.00.

This Amendment #02 is effective **upon signature** and continues through **September 30, 2021**.

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

AMEND Article I, Section 1 of the Contract:

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2021**.

TO READ:

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on *September 30, 2021*.

AMEND Article I, Section 3 of the Contract:

3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **one hundred thirty-three thousand two hundred dollars (\$133,200.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a fixed fee basis in accordance with the rates and costs specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.

TO READ:

3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed *one hundred sixty-seven thousand three hundred fifty-one dollars (\$167,351.00)*, for accomplishing the Work required by this Contract. Consideration rates are on a fixed fee basis in accordance with the rates and costs specified in **Exhibit D**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit D**.

AMEND Exhibit B, Section D of the Contract:

D. Hours of Operation

County crisis line shall be forwarded to Contractor by County staff per the following schedule:

Monday, Tuesday, Wednesday, Thursday: 6:30 p.m. through 8:45 a.m.		
Friday: 6:30 p.m. through 10:30 a.m.		
Saturday: 6:30 p.m. through 8:45 a.m. Monday		
Sunday: Clackamas Mental Health Center CLOSED		
HOLIDAYS	CONTRACTOR HOURS	CENTER HOURS
Independence Day, July 4	Midnight – 10:30 a.m.; 3:30 p.m. Saturday, July 4 through 8:45 a.m. Monday, July 6	11 a.m. – 4 p.m.
Labor Day, September 7	Midnight – 10:30 a.m.; 6:30 p.m. Monday, September 7 through 8:45 a.m. Tuesday, September 8	10 a.m. – 7 p.m.

Lines for Life #9710

Professional Services Contract – Amendment #02

Veteran’s Day, November 11	Midnight – 10:30 a.m.; 6:30 p.m. Wednesday, November 11 through 8:45 a.m. Thursday, November 12	10 a.m. – 7 p.m.
Thanksgiving Day, November 26	Midnight – 11:30 a.m.; 3:30 p.m. Thursday, November 26 through 8:45 a.m. Friday, November 27	11 a.m. – 4 p.m.
Christmas Day, December 25	Midnight – 11:30 a.m.; 3:30 p.m. Friday, December 25 through 8:45 a.m. Saturday, December 26	11 a.m. – 4 p.m.
<i>New Year’s Day, January 1</i>	<i>Midnight – 11:30 a.m.; 3:30 p.m. Friday, January 1 through 10:30 a.m. Saturday, January 2</i>	<i>11 a.m. – 4 p.m.</i>
<i>MLK Day, January 18</i>	<i>Midnight – 10:30 a.m.; 6:30 p.m. Monday, January 18 through 8:45 a.m. Tuesday, January 19</i>	<i>10 a.m. – 7 p.m.</i>
<i>Presidents Day, February 15</i>	<i>Midnight – 10:30 a.m.; 6:30 p.m. Monday, February 15 through 8:45 a.m. Tuesday, February 16</i>	<i>10 a.m. – 7 p.m.</i>
<i>Memorial Day, May 31</i>	<i>Midnight – 10:30 a.m.; 6:30 p.m. Monday, May 31 through 8:45 a.m. Tuesday, June 1</i>	<i>10 a.m. – 7 p.m.</i>

Upon notification from County, Contractor will allow County to forward the Crisis Line to Contactor outside of the above scheduled times.

TO READ:

D. Hours of Operation

County crisis line shall be forwarded to Contractor by County staff per the following schedule:

Monday, Tuesday, Wednesday, Thursday: 6:30 p.m. through 8:45 a.m.		
Friday: 6:30 p.m. through 10:30 a.m.		
Saturday: 6:30 p.m. through 8:45 a.m. Monday		
Sunday: Clackamas Mental Health Center CLOSED		
HOLIDAYS	CONTRACTOR HOURS	CENTER HOURS
Independence Day, July 4, 2020	Midnight – 10:30 a.m.; 3:30 p.m. Saturday, July 4 through 8:45 a.m. Monday, July 6	11 a.m. – 4 p.m.
Labor Day, September 7, 2020	Midnight – 10:30 a.m.; 6:30 p.m. Monday, September 7 through 8:45 a.m. Tuesday, September 8	10 a.m. – 7 p.m.
Veteran’s Day, November 11	Midnight – 10:30 a.m.; 6:30 p.m. Wednesday, November 11 through 8:45 a.m. Thursday, November 12	10 a.m. – 7 p.m.
Thanksgiving Day, November 26	Midnight – 11:30 a.m.; 3:30 p.m. Thursday, November 26 through 8:45 a.m. Friday, November 27	11 a.m. – 4 p.m.
Christmas Day, December 25	Midnight – 11:30 a.m.; 3:30 p.m. Friday, December 25 through 8:45 a.m. Saturday, December 26	11 a.m. – 4 p.m.
New Year’s Day, January 1	Midnight – 11:30 a.m.; 3:30 p.m. Friday, January 1 through 10:30 a.m. Saturday, January 2	11 a.m. – 4 p.m.

Lines for Life #9710

Professional Services Contract – Amendment #02

Page 4 of 5

MLK Day, January 18	Midnight – 10:30 a.m.; 6:30 p.m. Monday, January 18 through 8:45 a.m. Tuesday, January 19	10 a.m. – 7 p.m.
Presidents Day, February 15	Midnight – 10:30 a.m.; 6:30 p.m. Monday, February 15 through 8:45 a.m. Tuesday, February 16	10 a.m. – 7 p.m.
Memorial Day, May 31	Midnight – 10:30 a.m.; 6:30 p.m. Monday, May 31 through 8:45 a.m. Tuesday, June 1	10 a.m. – 7 p.m.
<i>Juneteenth, June 19, 2021</i>	<i>Midnight – 10:30 a.m.; 6:30 p.m. Friday, June 18 through 10:30 a.m. Saturday, June 19</i>	<i>10 a.m. – 7 p.m.</i>
<i>Independence Day, July 4, 2021</i>	<i>Midnight – 11:30 a.m.; 3:30 p.m. Monday, July 5 through 8:45 a.m. Tuesday, July 6</i>	<i>11 a.m. – 4 p.m.</i>
<i>Labor Day, September 6, 2021</i>	<i>Midnight – 10:30 a.m.; 6:30 pm Monday, September 6 through 8:45 a.m. Tuesday, September 7</i>	<i>10 a.m. – 7 p.m.</i>

Upon notification from County, Contractor will allow County to forward the Crisis Line to Contactor outside of the above scheduled times.

AMEND Exhibit D, Section a. of the Contract:

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$133,200.00**.

Base rate of \$6,170 per month for up to three hundred (300) individual calls.

Calls in excess of three hundred (300) per month shall be compensated at \$22.57 per call.

TO READ:

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$167,351.00**.

Base rate of \$6,170 per month for up to three hundred (300) individual calls.

Calls in excess of three hundred (300) per month shall be compensated at \$22.57 per call.

[Signature page follows]

Lines for Life #9710

Professional Services Contract – Amendment #02

Page 5 of 5

SIGNATURE PAGE

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

LINES FOR LIFE



5/17/21

Authorized Signature

Date

David E. Westbrook

Name / Title (Printed)

126379-14

Oregon Business Registry #

Domestic Nonprofit Corporation / Oregon

Entity Type / State of Formation

**CLACKAMAS COUNTY
BOARD OF COMMISSIONERS**

Commissioner: Tootie Smith, Chair

Commissioner: Sonya Fischer

Commissioner: Paul Savas

Commissioner: Martha Schrader

Commissioner: Mark Schull

Tootie Smith, Chair

Date

Approved as to form:



County Counsel

5/17/2021

Date

June 10, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment #20 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County

Purpose/Outcomes	Amendment #20 amends exhibit A to add the federal award information datasheet.
Dollar Amount and Fiscal Impact	Contract maximum value remains the same \$19,499,741.00
Funding Source	Funding through the State - No County General Funds are involved.
Duration	Effective March 1, 2021 and terminates on June 30, 2021
Previous Board Action	The Board previously reviewed and approved this agreement on June 20, 2019, Agenda item 062019-A1, September 5, 2019, Agenda item 090519-A1, September 26, 2019, Agenda item 092619-A5, October 24, 2019, Agenda item 102419-A5, October 31, 2019, Agenda item 103119-A3, December 12, 2019, Agenda item 121219-A2, January 8, 2020, Agenda item 010920-A8, March 26, 2020, Agenda Item 032620-A5, April 23, 2020, June 25, 230, Agenda item 062520-A8, October 22, 2020, Agenda item 102220-A1, January 14, 2021, Agenda item 011421-A3, January 28, 2021, Agenda item 012821-A8, February 25, 2021, Agenda item-A6, April 29, 2021, Agenda item A-4
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on May 10, 2021 KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	9329-20

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #20 amends exhibit A to add the federal award information datasheet. Contract maximum value remains the same \$19,499,741.00

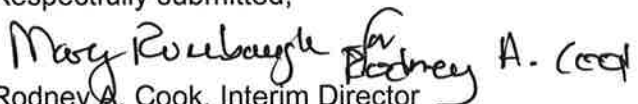
This contract is effective March 1, 2021 and continues through June 30, 2021.

Page 2 Staff Report
June 10, 2021
Agreement #9329-20

RECOMMENDATION:

Staff recommends the Board approval of this Amendment.

Respectfully submitted,


Rodney A. Cook, Interim Director
Health, Housing, and Human Services

Agreement #159803



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

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

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

RECITALS

WHEREAS, OHA and LPHA wish to modify the Table in the definition for Program Element of Exhibit A of the Agreement.

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

AGREEMENT

1. This Amendment is effective on the first day of the of the month noted in the Issue Date section of Exhibit C Financial Assistance Award FY21.
2. Exhibit A “Definitions”, Section 18 “Program Element” is amended to add Program Element titles and funding source identifiers as follows:

PE NUMBER AND TITLE • SUB-ELEMENT(S)	FUND TYPE	FEDERAL AGENCY/ GRANT TITLE	CFDA#	HIPAA RELATED (Y/N)	SUB-RECIPIENT (Y/N)
<u>PE 01-07</u> ELC ED Contact Tracing	FF	CDC/Epidemiology and Laboratory Capacity	93.323	N	Y
<u>PE01-08</u> COVID Wrap Direct Client Services	FF	CDC/Epidemiology and Laboratory Capacity	93.323	N	Y
<u>PE01-09</u> COVID-19 Active Monitoring - ELC	FF	CDC/Epidemiology and Laboratory Capacity	93.323	N	Y
<u>PE01-10</u> OIP – CARES	FF	Immunization and Vaccines for Children	93.268	N	Y

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

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

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

8. Signatures.

STATE OF OREGON ACTING BY AND THROUGH ITS OREGON HEALTH AUTHORITY (OHA)

By: _____

Name: /for/ Carole L. Yann

Title: Director of Fiscal and Business Operations

Date: _____

CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Approved by Wendy Johnson, Senior Assistant Attorney General on July 9, 2020. Copy of emailed approval on file at OHA, OC&P.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

By: _____

Name: Derrick Clark (or designee)

Title: Program Support Manager

Date: _____

June 10, 2021

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority (OHA) for access to the electronic referral system, Oregon Tobacco Quit Line.

Purpose/Outcomes	Oregon Health Authority (OHA) will facilitate adding regional partner health centers to their electronic referral system, Oregon Tobacco Quit Line. This includes: Clackamas Health Centers, Multnomah County Health System, Neighborhood Health Center, and Virginia Garcia Memorial Health Center.
Dollar Amount and Fiscal Impact	Contract maximum value is \$40,000.00.
Funding Source	Funding through Health Share of Oregon Grant - No County General Funds are involved.
Duration	Effective upon signature and terminates on December 31, 2021
Previous Board Action	No previous Board action
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on April 5, 2021 KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	10096

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval an Intergovernmental Agreement with the Oregon Health Authority to facilitate adding regional partner health centers to their electronic referral system, Oregon Tobacco Quit Line.

Clackamas County Public Health is partnering with Clackamas Health Centers, Multnomah County Health System, Neighborhood Health Center, and Virginia Garcia Memorial Health Center to strengthen the Tobacco cessation initiative. This project is funded by a grant from Health Share of Oregon.

Contract maximum value is \$40,000.00.

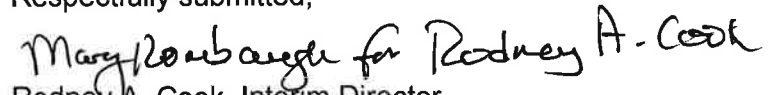
Page 2 Staff Report
June 10, 2021
Agreement #10096

This contract is effective upon signature and continues through December 31, 2021.

RECOMMENDATION:

Staff recommends the Board approval of this IGA.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary Roubange for Rodney A. Cook". The signature is written in a cursive style.

Rodney A. Cook, Interim Director
Health, Housing, and Human Services

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 10096

Division: PH

Subrecipient

Board Order #:

Contact: Weber, Jeanne

Revenue

Amend # \$

Program Contact:

Zentner, Jamie

Procurement Verified

Aggregate Total Verified

Non BCC Item BCC Agenda Date: Thursday, June 10, 2021

CONTRACT WITH: OR-Oregon Health Authority

CONTRACT AMOUNT: \$40,000.00

TYPE OF CONTRACT

- | | |
|---|--|
| <input type="checkbox"/> Agency Service Contract | <input type="checkbox"/> Memo of Understanding/Agreement |
| <input type="checkbox"/> Construction Agreement | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input checked="" type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease |
| <input type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off |

DATE RANGE

- | | |
|---|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____ |
| <input checked="" type="checkbox"/> Upon Signature _____ - 12/31/2021 | <input type="checkbox"/> Biennium _____ - _____ |
| <input type="checkbox"/> Other _____ - _____ | <input type="checkbox"/> Retroactive Request? _____ - _____ |

INSURANCE What insurance language is required?

Checked Off N/A

Commercial General Liability: Yes No, not applicable No, waived

If no, explain why:

Business Automobile Liability: Yes No, not applicable No, waived

If no, explain why:

Professional Liability: Yes No, not applicable No, waived

If no, explain why:

Approved by Risk Mgr _____

Risk Mgr's Initials and Date

BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No Yes (must have CC approval-next box) N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: _____

COUNTY COUNSEL

Yes by Kathleen Rastetter Date Approved: Monday, April 5, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE: _____

Date: _____

H3S Admin
Only

Date Received: _____

Date Signed: _____

Date Sent: _____

AGREEMENTS/CONTRACTS

X	New Agreement/Contract
	Amendment/Change Order Original Number _____

ORIGINATING COUNTY

**DEPARTMENT: Health, Housing Human Services
Public Health**

PURCHASING FOR: Contracted Services

OTHER PARTY TO

CONTRACT/AGREEMENT: OR-Oregon Health Authority

BOARD AGENDA ITEM

NUMBER/DATE:

DATE: 6/10/2021

PURPOSE OF

CONTRACT/AGREEMENT: OHA will coordinate with Clackamas County Public Health Division to implement electronic referrals from four health centers to the Oregon Tobacco Quit Line. The health centers are Clackamas Health Centers, Multnomah County Health System, Neighborhood Health Center, Virginia Garcia Memorial Health Center.

H3S CONTRACT NUMBER: 10096

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND OREGON HEALTH AUTHORITY**

OHA #170053-0
Agreement #10096

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Oregon Health Authority (Agency), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The County desires to contract with the agency to coordinate the connection of regional partners to the Oregon Tobacco Quit Line.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2021, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed forty thousand dollars (\$40,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit invoices for Work performed at the beginning of each electronic referral project, and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this

Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.

- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its

officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.

The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Jamie Zentner or their designee will act as liaison for the County.

Contact Information:

503-758-4143 - JZentner@clackamas.us

Hilde Hinkel or their designee will act as liaison for the Agency.

Contact Information:

(971) 673-9182 - janet.h.hinkel@state.or.us

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this

Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.

- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent

specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** Agency 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.
- M. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

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

U. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Oregon Health Authority

Chair, Board of County Commissioners

Tim D. Noe

Tim D. Noe, Center Administrator
[name/title]

Date

05/11/21

Date

S:\Admin\CONTRACTS\PUBLIC HEALTH\Expense\Oregon Health Authority\Electronic referral to Tobacco Quit Line (OHA)\FY20-21\Contracts\H3SPHOR-OregonHealthAuthority10096.docx

Exhibit A

SCOPE OF WORK

I. OHA is responsible for:

1. Coordinating activities with Optum (the Oregon Tobacco Quit Line operator) to ensure completion of the electronic referral system at the level of the Oregon Tobacco Quit Line.
 - a. E-referral process will support bi-directional data exchange between the Oregon Tobacco Quit Line and referring health care professionals at the health centers.
 - b. System will allow electronic sending of referrals to the Quit Line and any outcomes of referrals back to the sending clinic.
2. Coordinating with Optum to determine the appropriate electronic referral process to enable sending of patient data to OHA and delivery of outcome data to the health centers.
 - a. OHA will oversee implementation with Optum until OHA and CCHPD are satisfied with incoming and outgoing data.
 - i. Includes validation of system credentials, confirming required data fields, and testing functionality of the bi-directional system at each stage of implementation.
3. Ensuring Optum uses industry- approved, HIPAA-compliant methods for exchanging protected health information.
 - a. Includes ensuring Optum adheres to the electronic referral guidance recommended by the North American Quitline Consortium.
4. Confirming with Optum that the Quit Line received an actual referral (rather than a test referral).
5. Ensuring continued operation and maintenance of the electronic referral connection at the level of the Oregon Tobacco Quit Line, including annual fees from Optum.

II. CCPHD is responsible for:

1. Coordinating with health centers and electronic medical record (EMR) vendor (OCHIN Epic) to ensure completion of the electronic referral system at the level of the clinic serviced by OCHIN.
2. Coordinating with clinics and OCHIN to determine the appropriate electronic referral process to enable sending of patient data to OHA and delivery of outcome data to the health centers.
 - a. CCPHD will oversee implementation with clinics and OCHIN until OHA and CCHPD are satisfied with incoming and outgoing data.
 - i. Includes validation of system credentials, confirming required data fields, and testing functionality of the bi-directional system at each stage of implementation.

3. Ensuring clinics and OCHIN use industry- approved, HIPAA-compliant methods for exchanging protected health information.
4. Confirming with clinics that the referring healthcare professional received the associated, complete outcome report.
5. Maintaining ongoing referrals from clinics, including the connection serviced by OCHIN and associated fees.



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Carl D. Cox, Attorney at Law, for
Land Use Hearings Officer

Purpose/Outcome	Execution of a contract between the Department of Transportation and Development and Carl D. Cox, Attorney at Law, for land use decisions to be made by a hearings officer who acts on behalf of the Board of County Commissioners in conducting public hearings and issuing written decisions applying land use regulations set forth in the Clackamas County Zoning and Development Ordinance.
Dollar Amount and Fiscal Impact	Not to exceed \$175,000 per fiscal year with a total not to exceed amount of \$1,050,000 for six (6) years.
Funding Source	214 7441 00 431270 - Land use hearings officer fees are funded through a mix of application fees and General Fund.
Duration	Total contract duration is six (6) years starting July 1, 2021, ending June 30, 2027. This is structured as a two (2)-year initial term and two (2), two (2)-year optional renewals.
Previous Board Action/Review	Board Issues Session; June 1, 2021
Strategic Plan Alignment	<p>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> A core purpose in the Land Use and Development line of business is to provide planning, property information and permitting services so all in the County can experience a safe, thriving and well-planned community, make informed decisions, invest and develop property. Land use hearings are a legally required component of the land use permitting system.</p> <p>2. <i>How does this item align with the County's Performance Clackamas goals?</i> Ensuring community members can develop land and structures, and have access to permitting services, aligns with the Performance Clackamas strategic priority of growing a vibrant economy.</p>
Counsel Review	Reviewed and Approved by Counsel: May 24, 2021 ARN
Procurement Review	1. <i>Was the item processed through Procurement?</i> <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jennifer Hughes, Planning Director, Department of Transportation and Development, 503-742-4518
Contract No.	Contract #4133

Background:

Clackamas County’s Planning and Zoning Division (“Division”), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County’s Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, the Division contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

The prior hearings officer terminated the contract due to accepting alternative employment. The County temporarily filled the vacancy through an interim direct procurement until a full RFP process was completed. As a result of the RFP, the Division proposes to contract with two (2) qualified hearings officers to provide professional Land Use Hearings Officer services on a rotating basis. The contracts have an initial term of two (2) years with two (2) optional two (2)-year renewals for a total potential contract term of six (6) years.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 17, 2021. Proposals were opened on March 30, 2021. The County received two (2) Proposals: Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official. An evaluation committee of DTD personnel scored both Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official, and determined both were responsive and highly qualified and needed to meet the business needs of the department.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Land Use Hearings Officer Personal Services Contract with Carl D. Cox, Attorney at Law.

Sincerely,

Dan Johnson

Dan Johnson, Department Director

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4133**

This Personal Services Contract (this “Contract”) is entered into between **Carl D. Cox, Attorney at Law** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of the Department of Transportation and Development.

ARTICLE I.

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire **June 30, 2023** with the option for two (2) additional two (2) year renewals thereafter subject to the mutual agreement of the parties. However, such expiration shall not extinguish or prejudice the County’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
2. **Scope of Work.** Contractor shall provide the following personal services: Land Use Hearings Officer (“Work”), further described in **Exhibit A**.
3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$175,000** per fiscal year, with a total value, including all optional renewals, not to exceed **one million fifty thousand dollars (\$1,050,000)** for accomplishing the Work. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Fee Schedule. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

The not to exceed consideration amounts described above reflect the maximum Contractor could be paid for performing the Work. However, as detailed in Exhibit A, the Work will be performed as needed by, and upon request of, County on a rotating basis with other selected land use hearing officers. Contractor shall only be compensated for Work requested by County and actually performed by Contractor. Because the actual amount of Work needed is uncertain, and is shared among several land use hearing officers, County does not promise or guarantee any specific amount of Work will be requested from Contractor, nor does County promise or guarantee that Contractor will be paid the full not-to-exceed amount described above.

4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
5. Invoices shall reference the above Contract Number and be submitted to: Darcy Renhard, DRenhard@clackmas.us.
6. **Travel and Other Expense.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference

and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

7. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

8. **Contractor and County Contacts.**

Contractor Administrator: Carl D. Cox Phone: 503-504-1770 Email: carldcox@yahoo.com	County Administrator: Jennifer Hughes Phone: 503-742-4518 Email: jenniferh@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.

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

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.

5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be

caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contact in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, 28, and 31 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the Work actually performed and accepted by County as of the date of notice of termination, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

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

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable

belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County. Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

- 29. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.
- 30. COOPERATIVE CONTRACTING.** Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.
- 31. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Signatures on next page

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

Carl D. Cox, Attorney at Law

Carl D. Cox
Carl D. Cox (May 24, 2021 12:01 PDT)

May 24, 2021

Authorized Signature

Date

Carl D. Cox

May 24, 2021

Name / Title (Printed)

Attorney at Law

Oregon Business Registry #

Sole Proprietor

Entity Type / State of Formation

Clackamas County Board of Commissioners

Chair Person

Recording Secretary

Date

Approved as to Form:

[Signature]

May 24, 2021

County Counsel

Date

**EXHIBIT A
PERSONAL SERVICES CONTRACT
SCOPE OF WORK**

1. BACKGROUND

Clackamas County's Planning and Zoning Division ("Division"), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County's Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

Contracting for Services shall be handled on a rotating basis, or availability of Contractor to meet the County's needs for land use hearings.

2. SCOPE OF WORK

2.1. Hearings Officer Requirements: Contractor shall provide the following:

- 2.1.1. Conduct and decide most quasi-judicial land use matters under the Clackamas County Zoning and Development Ordinance and provide written decision of such to the Planning Director.
- 2.1.2. Contractor must be a licensed attorney, a member of the Oregon State Bar, and possess at least 5 years of experience in land use law.
- 2.1.3. Possess considerable knowledge of land use planning laws, rules, procedures and implementation measures, including city, county, state, and federal laws, as well as private rights in real property and land use development process.
- 2.1.4. Experienced in preparing for and conducting land use public hearings in an orderly and impartial manner while maintaining neutrality without prejudice or prejudgment.
- 2.1.5. Work effectively with a wide range of individuals in often stressful situations by communicating complex ideas in a logical and concise manner both orally and in writing.
- 2.1.6. Skilled in identifying and addressing key issues presented in oral and written arguments, and writing legally and factually sound findings of fact and law.
- 2.1.7. Familiar with contested case litigation in the state court, with administrative hearings and with the rules of evidence and procedure;
- 2.1.8. Consistently, efficiently, promptly and fairly hear and decide cases;
- 2.1.9. Must work agreeably with people and deal evenhandedly with all parties to a hearing.

2.2. Hearings Officer Required Tasks and Skills.

- 2.2.1. Prepare and conduct (via Zoom or in person, as determined by the County) quasi-judicial public land use hearings, apply knowledge and skill in land use law and hearings procedures, in accordance with the Clackamas County Zoning and Development Ordinance, Oregon law and applicable administrative rules.

- 2.2.2. Apply knowledge and expertise in County and Oregon land use laws to render legally defensible, sound written decisions that contain:
 - a. An explanation of facts on which the Land Use Hearings Officer has relied;
 - b. The pertinent provisions of County Ordinances, plans, case law, or other laws;
 - c. Conclusions must be formed from facts and law; and, any other relevant or required information and are easily understandable, grammatically correct, and concise.
- 2.2.3. Provide office facilities and administrative help for preparation of all written decisions, as necessary, as well as computer equipment, including audio and video capability, and internet connectivity sufficient to conduct hearings using the Zoom platform.
- 2.2.4. Written decision to the Planning Director must be within 20 calendar days of the close of a record.
- 2.2.5. Contractor must notify the Planning Director not less than six (6) weeks prior to dates of anticipated unavailability.
- 2.2.6. Maintain accurate, itemized records (by land use application) for the purpose of computing compensable time and submit said records to the Clackamas County Planning Director by the end of each month throughout the duration of the contract.
- 2.2.7. Contractor shall notify Planning Director via email of any potential or actual conflict of interest.

2.3. County Responsibilities. The County shall be responsible for the following activities:

- a. Schedule time and place of all Clackamas County Zoning and Development Ordinance Type III land use hearings a minimum of five (5) weeks in advance and all appeal hearings a minimum of three (3) weeks in advance, excluding those hearings that are continued by the Land Use Hearings Officer
- b. Notify the appropriate parties of hearings and decisions pursuant to the Clackamas County Zoning and Development Ordinance.
- c. Provide a hearing room for any in-person hearings will set up and facilitate any Zoom hearings.
- d. Provide for audio recording for all quasi-judicial land use hearings.

2.4. Land Use Hearing Schedule.

- 2.4.1. Land Use Hearings are held weekly, as needed, (typically on Thursdays, excluding legal holidays) from 9 am to 5 pm using the Zoom platform or in person at the Development Services Building located at 150 Beavercreek Road, Oregon City, OR.

2.5. Annual Review:

The County may conduct an annual performance review of services based on the following criteria:

- a. Delays in decision making and written orders.
- b. Amount of time spent handling land use cases.
- c. Ability to understand issues and law.
- d. Ability to deal effectively with applicants, members of the public and county staff.
- e. Ability to conduct orderly, effective, and efficient land use hearings.
- f. Ability to write decisions that are in alignment with state laws, state codes, and County ordinances.

**Exhibit B
FEE SCHEDULE**

Fees

Hourly rate includes preparing and conducting hearings, writing a legal final order, responding to County staff inquiries. Labor and direct expenses shall be billed at the rates listed below.

<i>Labor Expenses</i>	
Hearings Officer labor	\$160 per hour *
<i>Direct Expenses</i>	
Postage & delivery	Actual

Invoices.

Invoices shall include elements described in the table below. Any direct expenses identified on the invoice must be accompanied with a copy of the receipt for any direct expenses identified on the invoice.

<i>ITEM</i>	<i>Hours/Minutes</i>	<i>HOURLY RATE*</i>	<i>TOTAL</i>
Date of hearing _____			
Casefile No. ____ (Case Name ____)			
Preparation		\$160.00	\$ _____
Hearing**		\$160.00	\$ _____
Decision		\$160.00	\$ _____
<i>SUBTOTAL</i>			\$ _____
Direct Expenses (Actual Expenses)			
<i>TOTAL</i>			\$ _____

*Hourly rate billed in minimum 1/4-hour increments.

**In-person hearings will be billed at a two-hour minimum.



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Joe Turner, P.C., Municipal Hearing Officer, for
Land Use Hearings Officer

Purpose/Outcome	Execution of a contract between the Department of Transportation and Development and Joe Turner, P.C., Municipal Hearing Officer, for land use decisions to be made by a hearings officer who acts on behalf of the Board of County Commissioners in conducting public hearings and issuing written decisions applying land use regulations set forth in the Clackamas County Zoning and Development Ordinance.
Dollar Amount and Fiscal Impact	Not to exceed \$175,000 per fiscal year with a total not to exceed amount of \$1,050,000 for six (6) years.
Funding Source	214 7441 00 431270 - Land use hearings officer fees are funded through a mix of application fees and general fund.
Duration	Total contract duration is six (6) years starting July 1, 2021, ending June 30, 2027. This is structured as a two (2)-year initial term and two (2), two (2)-year optional renewals.
Previous Board Action/Review	Board Issues Session; June 1, 2021
Strategic Plan Alignment	<ol style="list-style-type: none"> <i>How does this item align with your department's Strategic Business Plan goals?</i> A core purpose in the Land Use and Development line of business is to provide planning, property information and permitting services so all in the County can experience a safe, thriving and well-planned community, make informed decisions, invest and develop property. Land use hearings are a legally required component of the land use permitting system. <i>How does this item align with the County's Performance Clackamas goals?</i> Ensuring community members can develop land and structures, and have access to permitting services, aligns with the Performance Clackamas strategic priority of growing a vibrant economy.
Counsel Review	Reviewed and Approved by County Counsel: May 24, 2021 ARN
Procurement Review	1. <i>Was the item processed through Procurement?</i> <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jennifer Hughes, Planning Director, Department of Transportation and Development, 503-742-4518
Contract No.	Contract #4136

Background:

Clackamas County’s Planning and Zoning Division (“Division”), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County’s Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, the Division contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

The prior hearings officer terminated the contract due to accepting alternative employment. The County temporarily filled the vacancy through an interim direct procurement until a full RFP process was completed. As a result of the RFP, the Division proposes to contract with two (2) qualified hearings officers to provide professional Land Use Hearings Officer services on a rotating basis. The contracts have an initial term of two (2) years with two (2) optional two (2)-year renewals for a total potential contract term of six (6) years.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 17, 2021. Proposals were opened on March 30, 2021. The County received two (2) Proposals: Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official. An evaluation committee of DTD personnel scored both Carl D. Cox, Attorney at Law, and Joe Turner P.C., Municipal Hearing Official, and determined both were responsive and highly qualified and needed to meet the business needs of the department.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Land Use Hearings Officer Personal Services Contract with Joe Turner, P.C., Municipal Hearing Official.

Sincerely,

Dan Johnson

Dan Johnson, Department Director

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4136**

This Personal Services Contract (this “Contract”) is entered into between **Joe Turner P.C., Municipal Hearing Official** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of the Department of Transportation and Development.

ARTICLE I.

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire **June 30, 2023** with the option for two (2) additional two (2) year renewals thereafter subject to the mutual agreement of the parties. However, such expiration shall not extinguish or prejudice the County’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
2. **Scope of Work.** Contractor shall provide the following personal services: Land Use Hearings Officer (“Work”), further described in **Exhibit A**.
3. **Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$175,000** per fiscal year, with a total value, including all optional renewals, not to exceed **one million fifty thousand dollars (\$1,050,000)**, for accomplishing the Work. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B, Fee Schedule. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

The not to exceed consideration amounts described above reflect the maximum Contractor could be paid for performing the Work. However, as detailed in Exhibit A, the Work will be performed as needed by, and upon request of, County on a rotating basis with other selected land use hearing officers. Contractor shall only be compensated for Work requested by County and actually performed by Contractor. Because the actual amount of Work needed is uncertain, and is shared among several land use hearing officers, County does not promise or guarantee any specific amount of Work will be requested from Contractor, nor does County promise or guarantee that Contractor will be paid the full not-to-exceed amount described above.

4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.
5. Invoices shall reference the above Contract Number and be submitted to: Darcy Renhard, DRenhard@clackmas.us.
6. **Travel and Other Expense.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference

and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

7. **Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

8. **Contractor and County Contacts.**

Contractor Administrator: Joe Turner P.C. Phone: 503-663-7092 Email: jtpc@frontier.com	County Administrator: Jennifer Hughes Phone: 503-742-4518 Email: jenniferh@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.

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

4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.

5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be

caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, 28, and 31 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the Work actually performed and accepted by County as of the date of notice of termination, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.

- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. NO ATTORNEY FEES. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized

use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County. Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a breach of its data security or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

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

30. COOPERATIVE CONTRACTING. Pursuant to ORS 279A.200 to 279A.225, other public agencies may use this Contract resulting from a competitive procurement process unless the Contractor expressly noted in their proposal/quote that the prices and services are available to the County only. The condition of such use by other agencies is that any such agency must make and pursue contact, purchase order, delivery arrangements, and all contractual remedies directly with Contractor; the County accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the County consents to such use by any other public agency.

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

Signatures on next page

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

Joe Turner P.C., Municipal Hearing Official

Joe Turner
Joe Turner (May 25, 2021 07:51 PDT)

May 25, 2021

Authorized Signature _____ Date _____

Joe Turner President

Name / Title (Printed) _____

533037-99

Oregon Business Registry # _____

S Corp. State of Oregon

Entity Type / State of Formation _____

Clackamas County Board of Commissioners

Chair Person _____

Recording Secretary _____ Date _____

Approved as to Form: _____

WJ May 25, 2021

County Counsel _____ Date _____

**EXHIBIT A
PERSONAL SERVICES CONTRACT
SCOPE OF WORK**

1. BACKGROUND

Clackamas County's Planning and Zoning Division ("Division"), which is part of the Department of Transportation and Development, administers state, regional and local land use and zoning regulations in unincorporated areas. In this work, they review residential, commercial and industrial development land use permits and develop long-range planning strategies.

As outlined in the County's Zoning and Development Ordinance, in executing the procedures of reviewing land use applications, contracts with a Land Use Hearings Officer to conduct public hearings and issue decisions on certain land use permit applications.

Contracting for Services shall be handled on a rotating basis, or availability of Contractor to meet the County's needs for land use hearings.

2. SCOPE OF WORK

2.1. Hearings Officer Requirements: The Hearings Officer shall provide the following:

- 2.1.1. Conduct and decide most quasi-judicial land use matters under the Clackamas County Zoning and Development Ordinance and provide written decision of such to the Planning Director.
- 2.1.2. Contractor must be a licensed attorney, a member of the Oregon State Bar, and possess at least 5 years of experience in land use law.
- 2.1.3. Possess considerable knowledge of land use planning laws, rules, procedures and implementation measures, including city, county, state, and federal laws, as well as private rights in real property and land use development process.
- 2.1.4. Experienced in preparing for and conducting land use public hearings in an orderly and impartial manner while maintaining neutrality without prejudice or prejudgment.
- 2.1.5. Work effectively with a wide range of individuals in often stressful situations by communicating complex ideas in a logical and concise manner both orally and in writing.
- 2.1.6. Skilled in identifying and addressing key issues presented in oral and written arguments, and writing legally and factually sound findings of fact and law.
- 2.1.7. Familiar with contested case litigation in the state court, with administrative hearings and with the rules of evidence and procedure;
- 2.1.8. Consistently, efficiently, promptly and fairly hear and decide cases;
- 2.1.9. Must work agreeably with people and deal evenhandedly with all parties to a hearing.

2.2. Hearings Officer Required Tasks and Skills.

- 2.2.1. Prepare and conduct (via Zoom or in person, as determined by the County) quasi-judicial public land use hearings, apply knowledge and skill in land use law and hearings procedures, in accordance with the Clackamas County Zoning and Development Ordinance, Oregon law and applicable administrative rules.

- 2.2.2. Apply knowledge and expertise in County and Oregon land use laws to render legally defensible, sound written decisions that contain:
 - a. An explanation of facts on which the Land Use Hearings Officer has relied;
 - b. The pertinent provisions of County Ordinances, plans, case law, or other laws;
 - c. The conclusions the Land Use Hearings Officer has formed from facts and law; and, any other relevant or required information and are easily understandable, grammatically correct, and concise.
- 2.2.3. Provide office facilities and administrative help for preparation of all written decisions, as necessary, as well as computer equipment, including audio and video capability, and internet connectivity sufficient to conduct hearings using the Zoom platform.
- 2.2.4. Written decision to the Planning Director must be within 20 calendar days of the close of a record.
- 2.2.5. Contractor must notify the Planning Director not less than six (6) weeks prior to dates of anticipated unavailability.
- 2.2.6. Maintain accurate, itemized records (by land use application) for the purpose of computing compensable time and submit said records to the Clackamas County Planning Director by the end of each month throughout the duration of the contract.
- 2.2.7. Contractor shall notify Planning Director via email of any potential or actual conflict of interest

2.3. County Responsibilities. The County shall be responsible for the following activities:

- a. Schedule time and place of all Clackamas County Zoning and Development Ordinance Type III land use hearings a minimum of five (5) weeks in advance and all appeal hearings a minimum of three (3) weeks in advance, excluding those hearings that are continued by the Land Use Hearings Officer
- b. Notify the appropriate parties of hearings and decisions pursuant to the Clackamas County Zoning and Development Ordinance.
- c. Provide a hearing room for any in-person hearings will set up and facilitate any Zoom hearings.
- d. Provide for audio recording for all quasi-judicial land use hearings.

2.4. Land Use Hearing Schedule.

- 2.4.1. Land Use Hearings are held weekly, as needed, (typically on Thursdays, excluding legal holidays) from 9 am to 5 pm using the Zoom platform or in person at the Development Services Building located at 150 Beavercreek Road, Oregon City, OR.

2.5. Annual Review:

The County may conduct an annual performance review of services based on the following criteria:

- a. Delays in decision making and written orders.
- b. Amount of time spent handling land use cases.
- c. Ability to understand issues and law.
- d. Ability to deal effectively with applicants, members of the public and county staff.
- e. Ability to conduct orderly, effective, and efficient land use hearings.
- f. Ability to write decisions that are in alignment with state laws, state codes, and County ordinances.

**Exhibit B
FEE SCHEDULE**

Fees

Hourly rate includes travel time to and from hearings, preparation, conducting hearings, preparing a legal final order, responding to County staff inquiries. Labor and direct expenses shall be billed at the rates listed below.

<i>Labor Expenses</i>	
Hearings Officer labor	\$215.00 per hour*
<i>Direct Expenses</i>	
Postage & delivery	Actual

Invoices.

Invoices shall include elements described in the table below. Any direct expenses identified on the invoice must be accompanied with a copy of the receipt for any direct expenses identified on the invoice.

<i>ITEM</i>	<i>UNITS</i>	<i>HOURLY RATE*</i>	<i>TOTAL</i>
Date of hearing _____			
Casefile No. ____ (Case Name ____)			
Preparation	hours	\$215.00	\$ _____
Hearing	hours	\$215.00	\$ _____
Decision	hours	\$215.00	\$ _____
<i>SUBTOTAL</i>			\$ _____
Direct Expenses (Actual Expenses)			
<i>TOTAL</i>			\$ _____

*Hourly rate billed in minimum 1/4-hour increments.



Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Grant Agreement with the U.S. Department of Treasury
for Coronavirus Local Fiscal Recovery Fund Award

Purpose/Outcome	Approval to accept the grant award from the U.S. Department of Treasury for Coronavirus Local Fiscal Recovery Fund Award
Dollar Amount and Fiscal Impact	The County is eligible \$81.8 million dollars, which is to be distributed in two payments, the first in May 2021 and the second in approximately a year.
Funding Source	Federal funding provided by the U.S. Department of Treasury through the American Rescue Plan Act, CFDA# 21.019
Duration	Agreement May 11, 2021 through and December 31, 2026 and covers eligible costs incurred between March 3, 2021 through December 31, 2024.
Previous Board Action	N/A
Strategic Plan Alignment	1. Ensure Financial Transparency and Accountability 2. Builds Public Trust through Good Government
County Counsel Review	Reviewed and approved by County Counsel; ARN 5/26/21
Procurement Review	1. Was this item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no 2. If no, provide a brief explanation: NA
Contact Person	Christa Bosserman-Wolfe, Deputy Director 503-758-4839
Contract No.	

BACKGROUND:

The American Rescue Plan Act provides a total of \$350 billion in Coronavirus State and Local Fiscal Recovery Funds to help eligible state, local, territorial, and Tribal governments meet their present needs and build the foundation for a strong recovery. The County is eligible to receive \$81.8 million dollars, which is to be distributed in two payments.

In order to receive the funds, local governments had to apply and the portal for applications opened on May 10, 2021. Finance staff applied for the funds on the County's behalf on May 11, 2021. The application also formulated the agreement, which was excuted by the County Adminstrator on the same day, with Board notification.

The first disbursement was received May 19, 2021 in the amount of \$40,613,961. A committee has been formed to make recommendations to the Board of County Commissioners on how to spend the funds and a survey has been launched to solicit residents feedback on various proposals.



Elizabeth Comfort
Finance Director

Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

RECOMMENDATION:

Staff respectfully recommends that the Board of Commissioners formally accept and ratify this grant agreement.

Respectfully submitted,

Christa Bosserman Wolfe
Deputy Director, Finance

Placed on the BCC Agenda _____ by Procurement and Contract Services


OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Recipient name and address: Clackamas County, OR 2051 Kaen Rd Oregon City, Oregon, 97045	DUNS Number: 096992656 Taxpayer Identification Number: 936002286 Assistance Listing Number: 21.019
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Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

DocuSigned by:
Recipient: 
D2C900F784B742C...

Authorized Representative: Gary Schmidt

Title: County Administrator

Date signed: 5/11/2021

U.S. Department of the Treasury:

Authorized Representative:
Title:
Date:

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY
CORONAVIRUS LOCAL FISCAL RECOVERY FUND
AWARD TERMS AND CONDITIONS

1. Use of Funds.
 - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
 - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
 - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
 - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. Compliance with Applicable Law and Regulations.

- a. Recipient agrees to comply with the requirements of section 603 of the Act, regulations adopted by Treasury pursuant to section 603(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
- b. Federal regulations applicable to this award include, without limitation, the following:
 - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
 - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
 - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
 - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.
 - v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
 - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
 - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
 - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
 - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
 - i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

- ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient's noncompliance with section 603 of the Act, other applicable laws, Treasury's implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 603(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 603(e) of the Act.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury."
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
 - b. Any debts determined to be owed the federal government must be paid promptly by

Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.

15. Disclaimer.

- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
 - i. A member of Congress or a representative of a committee of Congress;
 - ii. An Inspector General;
 - iii. The Government Accountability Office;
 - iv. A Treasury employee responsible for contract or grant oversight or management;
 - v. An authorized official of the Department of Justice or other law enforcement agency;
 - vi. A court or grand jury; or
 - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS

ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the “Recipient”) provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient’s beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient’s program(s) and activity(ies), so long as any portion of the Recipient’s program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury’s implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury’s directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient’s programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

OMB Approved No. 1505-0271

Expiration Date: November 30, 2021

4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.
7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other

OMB Approved No. 1505-0271
Expiration Date: November 30, 2021

agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient’s obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

Clackamas County, OR

5/11/2021

Recipient

Date

DocuSigned by:
Gary Schmidt
D2C900E784B742C

Signature of Authorized Official

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.



Clackamas County Sheriff's Office

ANGELA BRANDENBURG
Sheriff

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract #4061 with ChemImage Corporation for the purchase of Mail
Scanning Equipment for the Clackamas County Jail

Purpose/Outcomes	To detect and prevent contraband from entering the correctional facility and to ensure the safety of staff and adults in custody as well as the capacity to hold offenders accountable.
Dollar Amount and Fiscal Impact	The purchase price including 5-years extended warranty is \$179,694.00. This includes \$132,899 for equipment costs, \$46,000 for the extended 5-year warranty and \$795 for shipping. The purchase price will be reimbursed over the course of five years.
Funding Source	State Forfeiture Funds.
Duration	The extended warranty through this purchase is good through September 1, 2026.
Previous Board Action	None.
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This contract aligns with the Jail Program's strategic goal to provide a secure custody environment and social, medical, food, and education services to inmates so they can be safe while they are held accountable, prepare for release, and become productive members of the community. 2. How does this item align with the County's Performance Clackamas goals? This contract furthers the County's Performance Clackamas goal to ensure safe, healthy and secure communities.
Procurement Review	1. Was this item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no 2. If no, provide a brief explanation:
Counsel Review	Reviewed Date: May 18, 2021 ARN
Contract No.	#4061
Contact Person	Barb MCCullough 503-722-6703

Background:

Over the past few years an increase in drugs entering the jail facility through mail has become an increasing problem with over 2% of all incoming mail being processed containing contraband (this represented 20% of rejected mail in the jail). This past year the jail has completed twelve criminal investigations involving narcotics being sent

Office: 9101 SE Sunnybrook Blvd., Clackamas, OR 97015

Mailing: 2223 Kaen Road, Oregon City, OR 97045

Phone: 503-785-5000 • Fax: 503-785-5190 • www.clackamas.us/sheriff

through our jail mail system to our Adults in Custody. Many of these items of mail are soaked in narcotics and extremely difficult to detect by the naked eye. The narcotics that were found in these instances were Opiate in nature, which without being caught could have led to possible overdoses and deaths in custody by the receiving adults in custody. This issue creates a risk of safety to both staff and the adult in custody population. To help stem the tide of contraband entering into the facility this equipment will help detect narcotics not visible by human eye.

The total purchase price will be reimbursed with five (5) annual payments of \$35,938.80 through a related Contract with Global Tel*Link under the Inmate Phone System Contract.

Procurement Process:

Procurement issued a *Notice of Intent to Purchase with Single Candidate* for the equipment from ChemImage Corporation on April 29, 2021. No comments were received.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with ChemImage Corporation for the purchase of the Mail Scanning Equipment for the Clackamas County Jail.

Sincerely,



Jenna Morrison
Chief Deputy

Placed on the BCC Agenda _____ by Procurement and Contract Services

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #4061**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Sheriff’s department and **ChemImage Corporation** (“Contractor”). This Addendum shall be attached to, and incorporated into, the Mail Scanner purchase agreement (“Vendor Agreement”). As used below, "Contract" means this Addendum and the Vendor Agreement. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control.

- A. Term.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **September 1, 2026**.
- B. Consideration:** County agrees to pay vendor one hundred seventy nine thousand six hundred and ninety four dollars (**\$179,694.00**) per purchase agreement # 20210310-114826761. This includes the mail scanning system, extra peripherals, and the 5-years extended warranty, as set forth in Contractor’s quote, attached hereto as **Exhibit A** and incorporated by reference herein.
- C. County Contract Administrator.** The County Contract Administrator for this Contract is **Barb McCullough**.
- D. Invoices and Payments.** Invoices shall be submitted via email to lhamann@clackamas.us

Payment and late fees shall only be in accordance with ORS 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

- E. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

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

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

- F. Debt Limitation.** The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

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

I. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

J. Compliance. Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.

K. Tax Compliance. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

L. Indemnification. Contractor agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to

persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.

- M. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.
- N. Records.** Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.
- O. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- P. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- Q. Waiver.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- R. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections F, H, L, M, N, Q and R, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

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

ChemImage Corporation
7325 Penn Avenue, Ste. 200
Pittsburgh, PA 15206

Amanda McCombs  05/18/2021
09:24 AM EDT

Authorized Signature Date

Amanda McCombs, CFO

Name/Title (Printed)

Clackamas County

Chair

Recording Secretary

Date

Approved As To Form:

Andrew Naylor Digitally signed by Andrew Naylor
Date: 2021.05.18 10:15:32 -0700 **5/18/2021**

Clackamas County Counsel Date

EXHIBIT A
CONTRACTOR'S PURCHASE AGREEMENT
#20210310-114826761



Clackamas County OR - Mail Screener

Clackamas County OR

2223 Kaen Rd
Oregon City, OR 97045
USA

Barb McCullough

Lieutenant
barbmcc@clackamas.us
503-722-6703

Reference: 20210310-114826761

Quote created: March 10, 2021
Quote expires: June 8, 2021
Quote created by: Robert Levy
Account Manager Western US
levyr@chemimage.com
+1 (775) 781-2525

Comments from Robert Levy

Dear Lieutenant McCullough,

Thank you for your interest in our technology. Below you will find the requested solution and the options we discussed.

ChemImage understands the threat of illicit drugs smuggled into facilities through postal mail. Our customers also benefit from added security and intelligence data the Mail Screener provides.

This solution greatly increases facility security by empowering your officers with technology that will help them identify drugs hidden in the mail. We are committed to continually develop our technology with our customers to address the latest threats.

We look forward to earning your business.

Products & Services

Item & Description	Quantity	Unit Price	Total
VeroVision Mail Screener - Gen 3 VeroVision™ Mail Screener Detection System 3rd Generation • SWIR Hyperspectral Unit (SHU) • Mail Screening Lighting Stand for Document Scanning (Reflectance and Transmittance Modes) • Workstation Operator Control Unit with 23" Touch Screen Display • Ethernet and Sensor Head cables • Operator Manual • One Year Limited Warranty • Installation and Training	1	\$124,900.00	\$124,900.00
VeroVision Drug Presumptive Identification	1	\$9,900.00	\$3,999.50 after \$5,900.50 discount

One button presumptive identification of illicit contraband contained in the mail. Provides presumptive identification results in 2 minutes. Drug library updates included.

VeroVision Soaks and Sprays Software	1	\$9,900.00	\$3,999.50
Software addition that provides detection of mail items that have been sprayed with, or soaked in, methamphetamine and certain kinds of synthetic cannabinoids.			after \$5,900.50 discount

(This List Price does not incl disc.)

ChemImage Mail Screener 12 month	4	\$12,900.00	\$46,000.00
Extended Comprehensive Service Agreement			after \$5,600.00 discount
Library expansion when available. Material & labor covered (includes camera and filters). One annual preventative agreement			46k over 4 years \$11,500/cost dif of \$2573.50 per year for Comp Svc Agmt vs Standard Svc Agmt

Subtotals

One-time subtotal			\$178,899.00
			after \$17,401.00 discount

Other Fees

Shipping and handling			\$795.00
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Total \$179,694.00

Purchase Terms

If you have any questions, or if you require further information, please do not hesitate to contact the originator of this quotation. A summary of the key specifications and performance characteristics of the product are available upon request.

Shipping: 120 days ARO

Make checks payable to: ChemImage Corporation
accountsreceivable@chemimage.com
Federal E.I.N #542081245

Purchase of ChemImage products, software and services are subject to specific terms and conditions, which are incorporated by reference herein.

Review our Terms and Conditions using this link here <https://info.chemimage.com/hubfs/TsandCs/CI-TsCs.pdf> Your acceptance of these terms and conditions is required for order confirmation.

I hereby accept and acknowledge ChemImage's standard Terms and Conditions, referenced in the link above.

Signature

Signature

Date

Printed name

Questions? Contact me



Robert Levy

Account Manager Western US

levyr@chemimage.com

+1 (775) 781-2525

ChemImage

7325 Penn Avenue, Suite 200

Pittsburgh, PA 15208

Terms and Conditions

These Terms and Conditions constitute a material part of the agreement between ChemImage Corporation (Seller) and Customer. ChemImage agrees to sell the Products to Customer provided that (i) the Products are available at the time of the order, (ii) ChemImage accepts the order, and (iii) Customer is in full compliance with the terms and conditions of this Agreement. Customer agrees to purchase the Products for use within the United States.

1. Prices. Prices are based on the products and quantity described in the quote. Any changes or deletions to the product, quantity, or specifications may alter the price. Seller reserves the right to alter the product and prices in the quote, subject to Customer's confirmation.
2. Payment. Payment Terms. Payment terms are net thirty (30) days from date of invoice ("Due Date"). ChemImage must receive payment at the "Remit To" address listed on the invoice on or before the Due Date to be considered as received on time. Customer shall pay ChemImage costs incurred in the collection of any past due account under this Agreement if so ordered by a court of competent jurisdiction. In the event Customer is delinquent in payment of any amounts to ChemImage, whether or not related to this Agreement, ChemImage may, at its option, terminate this Agreement. If terminated pursuant to this section, Customer shall pay to ChemImage only the amounts due and owing for services and/or good actually provided pursuant to this Agreement.
3. Seller offers eCommerce solutions giving customers flexible invoice and payment options.
 - i. Invoice Options. Customer may choose to receive invoices
 - i. Electronically via email
 - ii. by mail
 - iii. or by email and mail
 - ii. (b) Payment Options. Payment to ChemImage may be made either electronically (preferred method) or by check. In the event that an electronic payment is made, Customer must include a remittance or invoice number with each transaction.
4. Delivery. Freight terms are FOB Destination unless otherwise specified. Notwithstanding anything in the foregoing to the contrary, Seller also charges a shipping charge for any of the Products. Additional charges for emergency or overnight deliveries will be the responsibility of Customer and will be added to the invoice.
 - (a) Damage or Shortage in Shipment. Seller exercises care in packing shipments. To minimize the possibility of error, all orders should be inspected upon receipt. ANY DAMAGE, SHORTAGE OR OVERAGE DUE TO SHIPPING SHOULD BE REPORTED TO SELLER'S CUSTOMER SERVICE DEPARTMENT AT 412.241.7335 or 1-877-241-3550 WITHIN TWO (2) BUSINESS DAYS OF RECEIPT. Seller may reject requests for return authorization received later than two (2) business days from Customer's receipt of the Products. Customer's cooperation in providing this information

will enable Seller to expedite the necessary adjustments. Customer agrees to purchase any and all insurance necessary to indemnify it against any loss in shipping. Seller will pre-pay and add shipping charges to the initial invoice.

Delivery dates are not guaranteed, but are estimated on the basis of immediate receipt by Seller of all information and approvals to be furnished by Customer and the absence of delays which are excused under Section 8 (Force Majeure). Seller shall endeavor in good faith to meet estimated delivery dates.

5. Limited Warranties. Seller warrants to the Customer that for a period of 1 year from the date of installation, equipment manufactured by us shall be free from defects in materials and workmanship for a period of one (1) year from the date of installation of such equipment. Services performed by Seller in connection with such equipment, such as site training and installation services relating to the equipment, shall be free from defects for a period of one year from the date of shipment. Customer agrees that the Seller must perform an annual maintenance and preventative diagnostic on the product to maintain this warranty or any extended warranty purchased by the Customer, and Customer agrees to provide Seller all requested or relevant data related to the product covered by this warranty. Warranty repair or replacement within this one-year period may cover system assemblies and subassemblies, including the system sensor head unit (SHU), cables, switches, optical train, and power module. If defects in materials or workmanship are discovered within the applicable warranty period as set forth above, Seller shall, at its sole option a) in the case of equipment, either repair or replace the equipment or b) in the case of defective services, re- perform such services. Seller may, at its sole discretion, issue a temporary system (a “loaner system”) to Customer while Customer’s warranted unit is undergoing repair. Seller shall repair units within a commercially reasonable time frame subject to Seller’s internal processes and availability of applicable system components and service personnel. Seller shall have the option of replacing equipment with substitute products or new, used, or refurbished replacement parts, and Customer acknowledges that parts used to repair or replace the system may be new, used, refurbished, or non-original manufacturer parts that perform to the factory specifications of the purchased system. Updates to software and libraries are available at no charge to Customer as long as customer is under warranty or has purchased an extended service warranty. This warranty does NOT include replacement glass for lamps, glass cleaner, light bulbs, sample analysis and investigation, or recipe development support. Such services and supplies may be purchased by Buyer from Seller, at Seller’s discretion.
6. Return Goods Policy. Seller can accept for credit only those Products that (a) do not perform pursuant to Seller’s specifications for the Products, (b) may have been damaged during transportation while under the care of Seller, or (c) Customer may have received in error. Return of the Products must be authorized before any returns will be accepted. In cases of Products damaged during shipments, Customer must contact Seller according to the procedures in Section 4(a) of these Terms and Conditions, and must do so within the time period specified. Customer shall contact Seller Customer Service for instructions on the return procedure to be followed.

7. Warranty shall be void due to any of the following: a) If the product has been opened, modified, altered, or repaired, except by Seller or its authorized agents, b) if the product has not been installed or maintained or used in accordance with instructions provided by Seller, including Customer's operational errors or requirements related to product placement, temperature, and environment, c) if the product has been subject to misuse, abuse, intentional physical/mechanical/electronic damage, malicious mischief, reckless handling, animal or insect infestation, accident, thermal or electrical irregularity, theft, vandalism, fire, liquid, or other peril, including, but not limited to, damages caused by war, nuclear incident, terrorism, or unexplained or mysterious disappearance, d) if the product has been damaged due to storage, containment, and/or operation outside the environmental specification of the product, e) if the product has been subject to a connection of the product to other systems, equipment, or devices or use with other software (other than software specifically provided by Seller), f) if product identification labels have been removed or altered on any part of the product or its constituent parts and accessories, or g) if the product's software has been damaged by computer viruses or other malware.

EXCEPT AS SET FORTH HEREIN, NO OTHER WARRANTIES OR REMEDIES, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED, IMPLIED (INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) OR OTHERWISE, SHALL NOT APPLY. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE WHATSOEVER, WHETHER AS A RESULT OF BREACH OF CONTRACT, TORT LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. REPAIR OR REPLACEMENT OF THE EQUIPMENT DURING THE APPLICABLE WARRANTY PERIOD IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCLUDING THE INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS OF SELLER, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR BREACH OF CONTRACT, TORT LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER ARISING BEFORE OR AFTER DELIVERY OF THE GOODS AND/OR PERFORMANCE OF THE SERVICES FURNISHED UNDER THE SALES CONTRACT, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PENAL LOSS OR DAMAGE OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, DAMAGE TO OR LOSS OF USE OF PLANT OR EQUIPMENT, EXPENSES INVOLVING INTEREST CHARGES OR COST OF CAPITAL, LOSS OF PROFITS OR REVENUES, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, OR CLAIMS OF CUSTOMER.

8. Termination. Seller may terminate the performance of the work under the agreement in whole at any time, or from time to time in part, by written notice to Customer. Such notice must be received by Customer at least 30 days before the date of termination.

9. Default – Cancellation. Customer may not cancel this order, or any portion thereof, except upon written notice to Seller and upon payment to Seller of the cancellation charges specified below. Customer acknowledges that such charges have been agreed upon, not as a penalty, but as a result of the difficulty of computing actual damages and the inconvenience and non-feasibility of Seller otherwise obtaining an adequate remedy.

Cancellation Notice Received Prior to Scheduled Delivery	Cancellation Charges (Percentage of Sales Price of Goods)
Less than 30 Days	50%
45 Days or More	25%

Customer may not cancel any order, or portion thereof, after shipment, Buyer may not reschedule or change any order, or portion thereof, without Seller’s prior written consent.

10. Bankruptcy/Insolvency - In the event of Customer’s bankruptcy or insolvency, or in the event any proceeding is brought against Customer, voluntarily or involuntarily, under the bankruptcy or insolvency laws, Seller may cancel any order then outstanding at any time during the period allowed for filing claims against the estate, and shall be paid the cancellation charges specified in Section 6 (Default—Cancellation).
11. Force Majeure. Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.
12. Hold Harmless. Except as otherwise stated in this Agreement, each party to this Agreement agrees to be solely responsible for any negligent acts or negligent omissions by or through itself, its agents, employees, and contracted servants, and each party further agrees to defend itself and themselves, and pay any judgments and costs arising out of such negligent acts or negligent omissions, and nothing in this Agreement shall impute or transfer any such responsibility from one party to the other party
13. Assignment. Neither this order nor any rights or obligations herein may be assigned by Customer nor may Customer delegate the performance of any of its duties hereunder without Seller’s prior written consent. ChemImage may not assign any rights or obligations under this Agreement without Customer’s prior written consent
14. Intellectual Property.
- i. Seller warrants that products furnished under the Sales Contract, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. Customer acknowledges and agrees that all intellectual property rights in the Products and Software and in any Seller technology, intellectual property, and know-how used to make or useful for the

manufacture or use of the products will at all times remain vested in the Seller. Customer shall not use Seller's trademark, tradename, or other indication in relation to the Product unless in accordance with Seller's instructions or prior written approval and solely for the purposes expressly specified by Seller in writing. Customer shall not have nor obtain any right, title, or interest in or to any Seller's owned trademarks, tradenames, or other indications. Customer acknowledges all rights, title, and interest of Seller in respect of and to Seller's owned trademarks, tradenames, and other indications.

- ii. ChemImage shall defend and indemnify Customer, and its elected officials and employees, against any third party claim(s) that the software license, or its use by Customer, infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets. Customer shall notify Contractor promptly in writing of the claim and give Contractor sole control over its defense or settlement; provided, however, Contractor may not agree to any settlement that requires payment of Licensee or adversely impacts Licensee without Licensee's prior written approval. Licensee agrees to provide Contractor with reasonable assistance, cooperation, and information in defending the claim at Contractor's expense.

15. Reserved.

16. Invoices and Notices. All correspondence covering this quote must be addressed to ChemImage Corporation, 7325 Penn Ave., Suite 200, Pittsburgh, PA 15208. The parties agree that for any transactions subject to this quote, facsimile signatures shall be accepted as original signatures, orders may be transmitted electronically and any document created pursuant to this order may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of this quote or any document created hereunder, based on the use of a facsimile signature, electronic order or the use of a copy retrieved from an electronic storage system.

17. Severability. In case any one or more provisions contained in this quote shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

18. Notice. Any notice given under this quote shall be in writing and will be effective: (i) when delivered if delivered in person; or, (ii) three (3) days after deposited in the United States mail to the address provided on the first page of this quote. Email communications are solely for the convenience of the parties and will not constitute valid or effective legal notice for purposes of this quote.

19. Taxes Prices do not include any municipal, provincial, state or federal sales, use, excise, value added or similar taxes. Consequently, in addition to prices specified, the amount of any present or future taxes, duties and/or tariffs that may be imposed shall be paid by Customer, or in lieu thereof, Customer will provide Seller with a tax exemption

certificate acceptable to the taxing authorities. International sales are subject to applicable transportation and import duties, licenses, and fees, or as agreed to by the purchase order.

20. Export Laws Customer agrees to comply with all applicable export laws, assurances, codes, and license requirements and controls of the United States and other applicable jurisdictions in connection with the use and resale of products including Customer's acceptance of responsibility for the payment of any relevant taxes or duties, etc.
21. ITAR Compliance. Customer is advised that this purchase order may involve goods or services subject to the International Traffic in Arms Regulations (ITAR) ITAR 22 CFR , Chapter 1, Sub-Chapter M, §120-§130, the Export Administration Regulations, and other applicable U.S. export laws and regulations, as may be amended from time to time. Sale of goods may be subject to licensing requirements by the U.S. Government, and may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the U.S. Department of State or use of an applicable exemption. If Customer is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, the Customer hereby certifies that it has registered with the U.S. Department of State, Directorate of Defense Trade Controls and understands its obligations to comply with the International Traffic in Arms Regulations (ITAR) and the Department of Commerce, Export Administration Regulations (EAR). Customer shall indemnify and hold Seller harmless from and against any liability claims, demands or expenses (including attorney's or other professional fees) arising from or relating to Customer's non-compliance with U.S. export laws.
22. Independent Contractor. ChemImage agrees by its signature below that it shall act in performance of this Contract as an independent contractor. No agency, employment, joint venture, or partnership has been or will be created between the Parties hereto pursuant to the terms and conditions of this Contract. ChemImage assumes all responsibility for any and all federal, state, municipal, or other tax liabilities, along with workers compensation, unemployment compensation, contributions to retirement plans, and/or insurance premiums which may accrue and/or become due as a result of compensation received for services and/or deliverables rendered and/or received under or pursuant to this Contract.
23. Drafting. This Agreement shall be deemed to have been drafted by both parties.
24. Waiver. The failure of either Party to require performance by the other party of any provision of this Agreement or any Amendment or Addendum shall not affect its right to require such performance at any time thereafter; nor shall the waiver by either Party of a breach of any provisions of this Agreement be taken or deemed to be a waiver of any other or future breach.

25. Applicable Law. This Agreement is governed by the laws of the State of Oregon, excluding the United Nations Convention on Contracts for the International Sale of Goods ('CISG') and excluding its conflict of laws rules.

26. Entire Agreement; Additional or Different Provisions Rejected; Modifications; Amendment. This quote constitutes the entire agreement between Customer and Supplier, unless superseded by a Distribution Agreement or other Amendment or Addendum signed by both parties. The parties may agree to amend provision(s) contained in these Terms and Conditions if such amendment (1) specifically references the provision(s) in these Terms and Conditions to be amended; (2) specifically provides how such provision(s) is amended, and (3) is executed by the President of Seller and designated representative of Customer. Otherwise, this Quote may be amended or renewed only by written agreement of both parties.

CUSTOMER

Signature

Date

Printed Name

Title



Clackamas County Sheriff's Office

ANGELA BRANDENBURG
Sheriff

June 1, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to Enter into an Intergovernmental Agreement with the State of Oregon through its Department of Transportation, Commerce and Compliance Division (CCD) to provide CCSO access to weight stations to assist with law enforcement activity.

Purpose/Outcome	This is a facility use agreement; which will provide CCSO access to CCD's weight stations 03-08 EB Brightwood, 03-07 WB Brightwood, and 03-04 Rock Creek
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Safety Impact	Furtheres the Board of County Commissioners' strategic priority of ensuring safe, healthy, and secure communities
Duration	The term of this agreement begins on the date all required signatures have been obtained and terminates on February 26, 2025.
Previous Board Action/Review	None
Counsel Review	1. <i>Date of Counsel review:</i> 05/10/2021 2. <i>Initials of County Counsel performing review:</i> AN
Procurement Review	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input type="checkbox"/> Not applicable 2. <i>If no, provide a brief explanation:</i> Not applicable
Contact Person	Lieutenant Richard Sheldon rsheldon@clackamas.us
Contract No.	34433

BACKGROUND:

This IGA will enhance the BCC's strategic priority of ensuring safe, healthy, and secure communities by enhancing CCSO's ability to carry out grants provided by ODOT, including the Oregon Motor Carrier Safety Action Plan. Lastly, this IGA will provide time and costs savings, as CCSO will not need to use portable scales that require ODOT weight certifications.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approves and signs this Intergovernmental Agreement between the Clackamas County Sheriff's Office and the Oregon Department of Transportation, Commerce and Compliance Division.

Respectfully submitted,

Angela Brandenburg,
Sheriff

AGREEMENT FOR SERVICES
Intergovernmental
CCD Weigh Stations – Clackamas County Sheriff’s Office

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Commerce and Compliance Division hereinafter referred to as "CCD" and the Clackamas County, acting by and through its Sheriff’s Office, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, a state agency may enter into agreements with units of local government for the performance of any or all functions and activities that state agency, its officers, or agents have the authority to perform.
2. The purpose of the Agreement is to allow Agency temporary access, upon written request, to CCD’s 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations to assist with enforcement activity. The Parties share a mutual goal of improving highway safety and protecting infrastructure.

The Parties therefore agree as follows:

TERMS OF AGREEMENT

1. **Project.** Under such authority, Agency wishes to retain the use of CCD’s 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations to perform enforcement activity as described in Exhibit A, hereinafter referred to as "Project."
2. **Exhibits Attached and Incorporated.**
 - a. This Agreement includes the following exhibits, each of which is attached and incorporated into this Agreement by reference:
 - Exhibit TCD –Terms, Conditions and Definitions
 - Exhibit A – Statement of Work and Delivery Schedule
 - Exhibit B – Compensation & Payment Provisions **[RESERVED]**
 - Exhibit C – Insurance **[RESERVED]**
 - Exhibit D – Special Terms & Conditions **[RESERVED]**
 - Exhibit E – Americans with Disabilities Act (ADA) Compliance **[RESERVED]**
 - Exhibit F – Contact Information
 - Exhibit G – 2ZXY Key Form
 - Exhibit H – Weigh Station Open/Close Procedure Example

3. **Order of Precedence**

Unless a different order is required by law, this Agreement shall be interpreted in the following order of precedence:

- 1) This Agreement (including all amendments, if any) less all Exhibits, attachments and other documents and information incorporated into this Agreement,
- 2) Exhibit TCD,
- 3) Exhibit A, the Statement of Work,
- 4) All other Exhibits,
- 5) Any other attachments,
- 6) Any documents/information incorporated into this Agreement by reference.

This provision survives termination of the Agreement.

4. **Term of Agreement; Effective Date.** The term of this Agreement begins on the date all required signatures are obtained and terminates on February 26, 2025, on which date this Agreement automatically terminates unless extended by a fully executed amendment.

5. **Termination.**

- a. This Agreement may be terminated by mutual written consent of all Parties.
- b. CCD may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by CCD, under any of the following conditions:
 - i. If Agency fails to perform any of the other provisions of this Agreement, and after receipt of written notice from CCD fails to correct such failures within ten (10) days or such longer period as CCD may authorize.
 - ii. If CCD fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow CCD, in the exercise of its reasonable administrative discretion, to continue to fund its obligations for performance of this Agreement.
 - iii. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if CCD is prohibited from paying for such services from the planned funding source.

- c. Agency may terminate this Agreement effective upon delivery of written notice to CCD under any of the following conditions:
 - i. For convenience upon providing CCD thirty (30) days' written notice.
 - ii. If CCD fails to perform any of the other provisions of this Agreement, and after receipt of written notice from Agency fails to correct such failures within ten (10) days or such longer period as Agency may authorize.
 - iii. If Agency fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to fund its obligations for performance of this Agreement.
 - iv. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if Agency is prohibited from paying for such services from the planned funding source.
 - d. Any termination of this Agreement shall not extinguish or prejudice any rights or obligations accrued to the Parties prior to termination.
6. **Certification.** Each Party certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party.
7. **No Substitutions or Assignments.** Agency shall not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without first obtaining the written consent of CCD. CCD's consent to any subcontract (or other delegation of duties) does not relieve Agency of any of its duties or obligations under this Agreement. This Agreement is binding upon and inures to the benefit of each of the Parties, and, except as otherwise provided, their permitted legal successors and assigns.
8. **No Third Party Beneficiaries.** Agency and CCD 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. This provision survives termination of the Agreement.
9. **Waiver; Amendment.** No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or

change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of CCD to enforce any provision of this Agreement shall not constitute a waiver by CCD of that or any other provision. This provision survives termination of the Agreement.

10. **Notice.** Except as otherwise expressly provided in this Agreement, all notices to be given relating to this Agreement must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Project Manager at the physical address or email address set forth in Exhibit F, or to such other addresses as either Party may indicate pursuant to this paragraph. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective when the sender receives confirmation of receipt from the recipient (not an auto-reply). Except as set forth above in this paragraph, the Parties may agree to provide operational notices such as delivery, acceptance or rejection of services or deliverables by email as may be mutually agreed in Exhibit A.
11. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This provision survives termination of the Agreement.
12. **Counterparts.** This Agreement may be executed in several counterparts all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. **Integration.** This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

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

Clackamas County, by and through its
Sheriff's Office

By _____

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____

Amy Ramsdell Commerce and
Compliance Division Administrator

Agency/CCD
Agreement No. 34433

By _____

Date _____

Date _____

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

By _____
Agency Counsel

Date _____

CCD Contact:

Garry Pullen, Field Services Technical
Analyst

3939 Fairview Industrial Ave.

Salem, OR 97302

Phone: (503) 378-6070

Email: Garry.P.Pullen@odot.state.or.us

Agency Contact:

Richard Sheldon

2223 Kaen Rd.

Oregon City, OR

Phone: (503) 785-5092

Email: rsheldon@co.clackamas.or.us

EXHIBIT TCD – TERMS, CONDITIONS AND DEFINITIONS

THIRD PARTY CLAIMS: The following paragraphs 1 through 4 shall survive termination of the Agreement.

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

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

RECORDS

The Parties acknowledge and agree that either Party, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of either Party which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after completion of the Project and final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party. This provision survives termination of the Agreement.

WORKERS COMP

All employers, including the Agency and Agency's contractors, if any, that employ subject workers, as defined in ORS 656.027, who work under this Agreement in the State of Oregon shall comply with ORS [656.017](#) and shall provide the required Workers' Compensation Insurance coverage, unless such employers are exempt under ORS [656.126\(2\)](#). The coverage shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. Agency shall ensure that each of its contractors complies with these requirements.

SUBCONTRACTOR REQUIREMENTS & INDEMNIFICATION

1. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that CCD shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of CCD, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
2. Any such indemnification shall also provide that neither Agency's contractor or subcontractor nor any attorney engaged by Agency's contractor or subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor or subcontractor is prohibited

from defending the State of Oregon, or that Agency's contractor or subcontractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor or subcontractor if the State of Oregon elects to assume its own defense.

3. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from CCD.

RIGHT OF ENTRY

1. CCD grants Agency the right to enter onto CCD right of way for the performance of duties as set forth in this Agreement.

GOVERNING LAW; VENUE; CONSENT TO JURISDICTION:

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between the CCD and Agency that arises from or relates to the 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 unless otherwise prohibited by law, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. AGENCY HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURTS, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. Nothing herein shall be construed as a waiver of the State's sovereign or governmental immunity, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or of any defenses to Claims or jurisdiction based thereon. This provision survives termination of the Agreement.

COMPLIANCE WITH LAW

Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

OWNERSHIP OF WORK PRODUCT; INTELLECTUAL PROPERTY [RESERVED]

Agency/CCD
Agreement No. 34433

REMEDIES [RESERVED]

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EXHIBIT A
STATEMENT OF WORK AND DELIVERABLE SCHEDULE
PROJECT: CCD Weigh Stations - Clackamas County Sheriff's Office

PROJECT DESCRIPTION and OVERVIEW of SERVICES

To allow Agency temporary access, upon written request, to CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations to assist with enforcement activity. The Parties share a mutual goal of improving highway safety and protecting infrastructure. There is no monetary consideration for this Agreement. The consideration for this Agreement are the parties' agreement to the terms and conditions set forth herein.

CCD Responsibilities

1. CCD shall provide a 2ZXY key to Agency to access CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations after receiving a completed 2ZXY Key Form, as shown on Exhibit G.
2. CCD's Project Manager for this Agreement is Carla Phelps, Field Motor Carrier Services Section Manager, or assigned designee upon individual's absence. CCD shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Agency Responsibilities

1. Upon execution of this Agreement, Agency shall complete and submit Exhibit G, attached hereto and by this reference made a part hereof, to CCD'S Project Manager listed in this Agreement, for issuance of a 2ZXY key to an authorized user. For the purpose of this Agreement, an authorized user is the person named on the 2ZXY Key Form.
2. Agency shall schedule occupancy dates for CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations for authorized user 30 calendar days in advance through CCD contact as shown on Exhibit F, Section b.
3. Agency shall schedule training for authorized user to operate CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh station through CCD contact as shown on Exhibit F, Section b.15 calendar days in advance of initial scheduled occupancy date at said weigh stations.
4. To ensure security, Agency's authorized user shall follow the CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations open/close procedure posted in the weigh station. Exhibit H is provided as an example. Agency shall immediately notify CCD contact as shown on Exhibit F,

Section b. of any breach of security. For the purpose of this Agreement, a breach of security is the unauthorized entrance into CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations.

5. Agency shall bear the cost for performing maintenance and repairs to CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek equipment and weigh stations that necessary as a result of Agency's occupancy. For the purpose of this Agreement, maintenance for said weigh stations shall include, but is not limited to; Agency to provide their own cleaning supplies and to wipe down surfaces with a disinfectant, to provide their own PPE and hand sanitizer, and to replenish used paper products to the same condition as when Agency arrived to CCD's weigh station. For the purpose of this Agreement, repairs to said weigh stations shall include any damages caused by Agency, intentional or accidental. Examples include, but are not limited to; printer knocked off counter and breaks or key broken in door lock.
6. Agency shall carry adequate insurance, or self insurance, to cover personal injury and property damage during Agency's occupancy of CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations.
7. Agency shall contact CCD as shown on Exhibit F, Section b., immediately to report any issues or damages incurred during occupancy to the CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh station buildings or equipment. Agency shall email all applicable photos and documentation to CCD.
8. Agency will provide their own computer and mobile Wi-Fi to access the Web Enforcer program, IGA 31060 while using CCD's 03-08 EB Brightwood, 03-07 WB Brightwood and 03-04 Rock Creek weigh stations.
9. Agency shall be clear when issuing citations they are in no way acting on behalf of the Oregon Department of Transportation.

EXHIBIT F - CONTACT INFORMATION

1. The Parties Contact Information is as follows:

a. CCD's Project Manager:

Name:	Carla Phelps, Field Motor Carrier Services Section Manager
Address:	3930 Fairview Industrial Drive SE, Salem OR 97302-1166
Ph:	503-510-9370
E-mail:	Carla.d.phelps@odot.state.or.us

b. CCD's weigh station contact:

Name:	Karla Tackett
Address:	500 SE Frontage Rd. Cascade Locks, OR 97014
Ph:	541-374-8980
E-mail:	Karla.R.Tackett@odot.state.or.us

c. Agency's PM or Contact:

Name:	Sgt. Sean Collinson
Address:	Oregon City, OR 97045
Cell:	971-563-9529
E-mail:	seancol@clackamas.us

2. Either Party may change the Project Manager designation during the term of this Agreement by promptly sending written notice (e-mail acceptable) to the other Party, with a copy to ODOT Procurement Office.

EXHIBIT G – 2ZXY KEY FORM



Oregon

Kate Brown, Governor

Department of Transportation
Commerce and Compliance Division
3930 Fairview Industrial Drive SE
Salem, OR 97302-1166
www.oregon.gov/ODOT/MCT/

I WAS ISSUED 2ZXY KEY NO. _____ FROM THE OREGON DEPARTMENT OF TRANSPORTATION, COMMERCE AND COMPLIANCE DIVISION (CCD). BY TAKING POSSESSION, I UNDERSTAND THAT I AM RESPONSIBLE FOR THE SAFEKEEPING OF THE KEY. IF THE KEY IS LOST OR STOLEN, I WILL NOTIFY THE CCD PERSONNEL AT 3930 FAIRVIEW INDUSTRIAL DR SE, SALEM OR 97302-1166.

NAME (PRINTED)

AGENCY

ADDRESS

PHONE NUMBER

DATE

SIGNATURE

EXHIBIT H – CCD WEIGH STATION OPEN/CLOSE PROCEDURE EXAMPLE (Procedure will be posted in the building)

- **OPENING:**

- Light switches to the right of the entrance need to be **ON** only during **dark** hours.



- Breaker box to the left of the entrance: Inside are two breakers that are labeled **OPEN/CLOSE SIGNS**, Both need to be turned on (This allows use of light switches on the wall near the scale door, light switches are labeled as well).



- Ensure all blinds are open.
- Located to the left of the desk, a light switch will turn on power to **Red/Green light (only power)**. Actual operation of red/green light is toggled by foot pedal on floor. **Ensure green light is on and functioning prior to opening scale.**



- **WITH ALL THESE STEPS DONE, WEIGH STATIONS WILL BE READY TO OPEN.**



- **CLOSING:**

- Wipe down surfaces and door knobs with a disinfectant cleaner to prevent the spread of contagious diseases and replenish used paper products to the same condition as when Agency arrived.
- Ensure **all** lights are off...outside, red/green, office lights, weigh station open/closed signs.
- If absent for **more** than a day from CCD's weigh station, turn off the breakers for the weigh station open/closed signs to conserve power.
- Empty garbage and Incinolet toilet prior to leaving.
- Ensure **both** doors are locked and secure prior to leaving.



Department of Finance

Elizabeth Comfort
Finance Director

Procurement & Contracting Services

Public Services Building
2051 Kaen Road, Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #2 to Contract #4111 with Star Cars, LLC for
Sheriff's Office Vehicle Installation Services

Purpose/Outcomes	Approve to provide install services for Sheriff's Office vehicles.
Dollar Amount and Fiscal Impact	The original contract amount was \$140,000. Amendment #1 renewed the contract for 4 years and an additional \$560,000. Amendment #2 revives the contract through October 2021 and adds an additional \$150,000 for a total not to exceed \$850,000.
Funding Source	Sheriff's Office Budget 216-1603-06831-485400
Duration	This amendment extends the contract through October 31, 2021 while the department goes out for an RFP.
Previous Board Action	9/22/2016 the BCC approved Amendment #1 for an additional \$560,000 and extended the contract through June 30, 2020. Prior discussions related to budget Issues Discussions 6/1/21, approval to move forward to Business Meeting 6/10/21.
Strategic Plan Alignment	Furthers the County's focus to keeping our residents safe, healthy and secure
Procurement Review	1. Was this item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no 2. If no, provide a brief explanation:
Counsel Review	Reviewed Date: AN 5/20/21
Contract No.	#4111
Contact Person	Mike Palmer, CCSO 503.785.5099

Background:

Star Cars has been providing vehicle equipment installation services for the Sheriff's Office fleet since 2006. Previous contracts have been procured through Fleet Services (Finance, now DTD) with input from the Sheriff's office fleet manager. Moving forward, contracts for vehicle equipment installation for the Sheriff's Office fleet will be between the Sheriff's Office and the vendor with the assistance of procurement.

Procurement Process:

This Amendment is in accordance with LCRB C-047-0800(b) for an unanticipated amendment. Amendment #2 is a 107% increase to the original contract value. The original contract was issued from an RFP for the Finance, on behalf of Fleet. When the original contract was issued, all sheriff vehicle work was done through Fleet. Fleet has since become part of DTD. To maintain the integrity of the original contract, this Amendment needs to go through Finance on behalf of CCSO and Fleet.

Recommendation:

Staff respectfully recommends that the Board approve and execute Amendment #2 for the contract with Star Cars, LLC while the department goes out for a formal RFP solicitation.

Sincerely,

Elizabeth Comfort

Elizabeth Comfort
Finance Director

Placed on the BCC Agenda _____ by Procurement and Contract Services

**AMENDMENT #2
TO THE CONTRACT DOCUMENTS WITH STAR CARS, LLC FOR SHERIFF PATROL
VEHICLE INSTALLATION SERVICES
Contract #4111**

This Amendment #2 is entered into between **Star Cars, LLC** ("Contractor") and Clackamas County ("County") and shall become part of the Contract documents entered into between both parties on **June 23, 2015** ("Contract").

The Purpose of this Amendment #2 is to make the following changes to the Contract:

- Section 1. **COMPENSATION**, is hereby amended as follows:
The Contract termination date is hereby changed from June 30, 2020 to **October 31, 2021**.

County and Contractor acknowledge that Contractor performed services under the Contract after the original expiration date of June 30, 2020. By execution of this Amendment #2, the County hereby approves and ratifies services performed after June 30, 2020. All previously-performed services are and remain subject to the terms and conditions of the Contract. The County reserves all rights, remedies, claims, and causes of action it may have with respect to previously performed services.

County is authorizing an additional **\$150,000.00** as compensation for services Contractor performed, or will perform, during the time-period from July 1, 2020 through October 31, 2021. The total Contract Compensation shall not exceed \$850,000.00.

ORIGINAL CONTRACT	\$ 140,000.00
AMENDMENT #1	\$ 560,000.00 +Time and Language
<u>AMENDMENT #2</u>	<u>\$ 150,000.00 + Time</u>
TOTAL AMENDED CONTRACT	\$ 850,000.00

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #2, effective upon the date of the last signature below.

Star Cars, LLC

Clackamas County

 05-20-2021
Authorized Signature Date

Chair

Douglas R. Martell
Printed Name

Recording Secretary

Date

Approved as to form:

Andrew Naylor Digitally signed by Andrew Naylor
Date: 2021.05.20 13:44:42 -07'00'

County Counsel

Date



**Cheryl Bledsoe, Director
Department of Communications**

Communications and Emergency Operations Center
2200 Kaen Road, Oregon City, OR 97045

STAFF REPORT

June 3, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

House Bill 5042: County Communication Infrastructure Grant Program

Purpose/Outcomes	Sign contract with ODF for acquisition of remote dispatching kits
Fiscal Impact	Will receive up to \$298K in reimbursement from ODF
Contact Person	Cheryl Bledsoe, C-COM Director (971) 284-3091

BACKGROUND:

On April 13th, C-COM received a notice from County Disaster Management regarding a very short notice communication grant opportunity through the Oregon Department of Forestry (ODF), relating to House Bill 5042 which appropriated money for the biennium ending June 30, 2021 in the amount of \$1,500,000.

Due to the abbreviated funding cycle, one-page grant applications were due on April 23rd and were submitted by Clackamas County Disaster Management to ODF. Two applications were submitted by C-COM for remote dispatching kits (value \$74,500 each for \$149K total) and by C800 Radio Group for VHF radio equipment (value \$186,250).

Both CCOM and C800 were notified of selection on 5/5/21 and received a copy of the CCOM contract from ODF on 5/25/21. ODF decided to provide CCOM with \$298K towards the procurement of four (4) remote dispatching kits to support future evacuations.

The procurement window is very tight as all equipment must be received by June 30, 2021. CCOM has open contracts with existing vendors which should aid in meeting these procurement timelines.

CCOM will participate in the supplemental budget process in June with Finance to be prepared to expend and request reimbursement for use of these funds within the grant timelines.

RECOMMENDATION:

CCOM requests county signature on the ODF grant forms for acceptance of these grants.

Sincerely,

Cheryl Bledsoe,
C-COM Director

Oregon Department of Forestry
HB 5042 Communications Infrastructure - Grant Agreement
Reimbursement Request

Grantee Organization:	Clackamas County - CCOM
Grantee Address:	2200 Kaen Road Oregon City, OR 97045
Grantee Phone:	971-284-3091
Grantee Contact:	Cheryl Bledsoe cbledsoe@clackamas.us

Invoice #: _____

Date: _____

Submit via email to: jeff.d.burns@oregon.gov Cc: mary.k.schmelz@oregon.gov
Oregon Department of Forestry Federal Initiatives Unit, HB 5042 - Communications Infrastructure 2600 State Street Salem, OR 97310 Attn: Mary Schmelz Cc: Jeff Burns

Grant Agreement #/Project Name: # /
 Billing Period: From: / / To: / /

Deliverables from Scope of Work	Percentage Complete	Accomplished this Invoice period	Accomplished Prior to Invoice Period	Total Accomplished To-Date
Example: Purchase of 2 deployabe radio kits	50%	1	0	1

Cost Category	Previous Invoices	Current Billing	Expenditures To Date	Match (if any)	
				In-kind	Cash
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual Payments					
Other					
Invoice Total					

Narrative justification by line item: totals should match claim above.

For each line item	Detail by position or item cost, rate, number of units, and subtotals. Example: Personnel and Fringe (\$1,215, \$712 totalling \$1,927) are for 3 Natural Resource Specialists working 15 hours @ \$47/hour.
Personnel & Fringe	
Travel	
Equipment	
Supplies	
Contractual Payments	
Other	

GRANT AGREEMENT
BETWEEN
OREGON DEPT. OF FORESTRY
AND
Clackamas County

THIS GRANT AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between the Oregon Department of Forestry ("ODF"), a department of the State of Oregon Government, and Clackamas County ("Grantee"), a political subdivision of the State of Oregon (collectively, the "Parties" and individually "Party").

RECITALS

- A. This Agreement is authorized by ORS 477.406 and ORS 279A.050. ODF will provide grant funds to Grantee under this agreement to implement projects that contribute to communication capability and infrastructure beginning with the signing of this Agreement and completing work by June 30, 2021. Pre-award costs will be allowed back to September 7, 2020 ("Agreement Period")
- B. ODF has been designated by Oregon State Legislature as the oversight state agency that would direct the state allocated funding to Grantee.

NOW THEREFORE, the Parties agree as follows:

TERMS

1. **Grant Award.** Grantee agrees to implement communications infrastructure projects described in the Statement of Work and Budget, attached as Exhibit A, and as specified in this Agreement. In return ODF agrees to provide the payment for actual costs of expenditures identified in this agreement according to the Budget, as specified in Exhibit A.

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

2. **Statement of Work and Budget.** Grantee agrees to accomplish the work described in Exhibit A attached hereto and by this reference made a part thereof.
3. **Term.** The term of this Agreement shall commence with the signing of this agreement by all Parties and expire on June 30, 2021. Project costs detailed in the approved scope of work and budget, incurred after the pre-award date (September 7, 2020) may be reimbursable. Grantee cannot request reimbursement for any expenses incurred after

June 30, 2021.

4. **Records Maintenance and Access.**

- a. Grantee will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the grant moneys or the project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination or expiration of this Agreement. If there are unresolved audit questions or litigation at the end of the six-year period, Grantee will retain the records until the questions or litigation is resolved.
 - b. Grantee will document the expenditure of all grant moneys disbursed by ODF under this Agreement. Grantee will create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODF to verify how the grant moneys were expended, including without limitation accounting for all other funds expended, as well as in-kind services and donated materials.
 - c. The Secretary of State's Office of the State of Oregon and their duly authorized representatives will have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the grant moneys provided hereunder, or the project for the purpose of making audits and examinations.
5. **Payment.** This grant is to reimburse Grantee for actual expenditures incurred pursuant to this Agreement through the end of the Agreement Term. Grantee agrees that invoices submitted for billing purposes must contain the information exhibited in the Sample Invoice contained in Exhibit B. Invoicing periods should be monthly or longer.
6. **Reporting.** Grantee shall provide ODF with one final report showing funds expended and work completed. This final report shall include percent complete for each task in the Statement of Work (Exhibit A), describe work completed by the Grantee for each task in the Statement of Work (Exhibit A), and summarize the final outcomes of the completed project. The final report will be due within 45 days following the date of expiration.
7. **Award Closeout.** Grantee will submit to ODF all financial performance documentation, the final report, all deliverables specified in the Statement of Work, and any final reimbursement requests required by the terms of the agreement within 45 days following the date of expiration or termination of this grant.
8. **Public Domain Information.** The project funded by this grant will produce a program model that other entities wanting to promote similar projects may use. Grantee acknowledges that all program model information developed from Agreement funds will become public information subject to the requirements of ORS 192.311 to 192.478.
9. **Modification Provisions.** The terms of this Agreement may be modified by mutual agreement of the Parties. Any modification shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.

10. **Termination of Agreement.** This Agreement may be terminated:
- (a) At any time by mutual written consent of all Parties.
 - (b) Upon written notice by ODF to Grantee for failure to perform any provision of this Agreement.
 - (c) Upon 30 days written notice by the ODF to Grantee for any other reason specified in writing. or
 - (d) At any time, upon written notice by the ODF, if ODF lacks sufficient funding, appropriations, limitations, allotments, or other expenditure authority to allow ODF, in the exercise of its reasonable administrative discretion, to disburse the grant funds.
11. **Compliance with Laws.** Grantee agrees to comply with all local, state, and federal laws in the execution of this project.
12. **Defense and Indemnification.** Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each Party agrees to hold harmless, defend, and indemnify the other Party, its officers, employees and agents against any and all claims, demands, actions or suits (including all attorneys' fees and costs) arising from this Agreement where the claim, suit, action, loss, damage, injury or liability is attributable to the acts or omissions of the indemnifying Party, its officers, employees or agents.
- Nothing in this section shall require a Party to indemnify the other Party from liability arising from the sole negligence of the other Party, its officers, employees, or agents.
13. **Governing Law and Forum.** The Parties expressly agree that this Agreement shall be governed and interpreted in accordance with the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court.
14. **Assignment.** This Agreement is non-assignable and non-transferrable.
15. **Contracting.** Grantee, at its discretion, may contract portions of its work under this Agreement without the prior written approval of ODF. Grantee shall require contractor to agree, as to the portion contracted, to fulfill the obligations of Grantee as specified in this Agreement. Grantee shall remain obligated for full performance hereunder, and ODF shall incur no obligation other than its obligations to Grantee hereunder. Grantee agrees

that if contractors are employed in the performance of this Agreement, Grantee will follow all required public contracting policies and procedures established by Grantee.

16. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or un-enforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal, or unenforceable shall construe this Agreement without such provision to give effect to the intentions of the Parties to the maximum extent possible.
17. **Integration.** This Agreement contains the entire agreement between ODF and Grantee and supersedes any, or all, prior written or oral discussions or agreements.
18. **Waiver.** ODF and Grantee shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

19. **Insurance.**

- a) Grantee shall carry the insurance types and amounts described below and will continue this coverage through Project completion. In addition, Grantee shall require that all contractors or consultants carry the minimum insurance types and amounts described below.

Insurance Type	Minimum Amount
General liability	\$1,000,000 per occurrence, \$2,000,000 annual aggregate
Auto liability	\$1,000,000 combined single limit

- b) If requested by ODF, Grantee shall provide Certificate(s) of Insurance for all required insurance. As proof of insurance ODF has the right to request copies of insurance policies and endorsements relating to the insurance requirements in this Agreement.
- c) Grantee or the insurer must provide at least 30 days' written notice to ODF before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

20. **Notice.** Any notice under this Agreement shall be in writing and shall be effective when actually delivered or when deposited in the mail, addressed to the Parties as follows:

ODF: Jeff Burns
Partnership & Planning Director
Oregon Dept. of Forestry
2600 State Street
Salem, OR 97310
(503) 945-7346
Jeff.d.burns@oregon.gov

Grantee: Cheryl Bledsoe, CCOM Director
CCOM – Clackamas County
2200 Kaen Road
Oregon City, OR 97045
971-284-3091
cbledsoe@clackamas.us

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

- Exhibit A Statement of Work and Budget
- Exhibit B Sample Invoice

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

Oregon Dept. of Forestry

Clackamas County

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

Reviewed by the Oregon Department of Justice (approval via Email in lieu of signature)

Matt B. DeVore

Date

Exhibit A

Statement of Work and Budget

ODF – Clackamas - Agreement

1.0 Overall Project Administration

Clackamas County will establish and maintain records, files, and any other materials necessary to track project implementation and expenditure of project funds. Clackamas County will participate in project management conference calls, meetings, etc. as scheduled by ODF. Clackamas County will provide information requested in a timely manner for completion of regular reporting.

2.0 Project Overview

The goal of this project is to replace or upgrade public safety emergency communications systems damaged or compromised by the 2020 Labor Day fires.

During the 2020 wildfires, the Clackamas County Communications – CCOM (911) center evacuated due to evacuation orders, threatening emergency communications in the area. This project will ensure communications continuity in emergencies by having deployable “Dispatch Go-Kits” that CCOM dispatchers can use in other centers or remotely. This project would allow CCOM to utilize the equipment in Clackamas, Columbia and Washington counties.

3.0 Tasks, Deliverables and Time Line

The work to be performed under this Agreement will begin on the effective date of the Agreement, allowing for pre-award costs back to September 7, 2020 and end by **June 30, 2021**. Specific tasks to be completed by Clackamas County under this agreement are listed below with associated deliverables and timeline.

A. Task #1: Procure communications equipment

Task #1 Timeframe: May 1, 2021 – June 30, 2021

Detailed description of Task #1: Procurement of 4 Computer Aided Dispatch (CAD) licenses; 4 PC’s; 4 monitors with peripherals; 4 phone command posts; 4 mobile radios with foot pedals; 4 portable radios; and networking and shipping costs.

Task #2: Configuration and live testing of remote communication equipment

Task #2 Timeframe: June 1, 2021 – June 30, 2021

Detailed description of Task #2: CCOM staff would configure equipment and dispatcher(s) would live test equipment offsite.

Deliverable(s): A flexible communications system in the region (Clackamas, Columbia and Washington Counties). This system would provide communications equipment for supplemental staffing from offsite locations and facilitate uninterrupted public safety emergency communications.

4.0 Budget

Budget Category	Amount
Personnel Salaries / Wages	
Fringe	
Contracted Services	
Travel	
Supplies/Materials	
Equipment	
4 CAD License/PC/Monitor/Peripherals @\$ 15,000 ea	\$60,000.00
4 Phone command posts @ \$30,000 ea	\$120,000.00
4 Mobile radio with foot pedal @ \$20,000 ea	\$80,000.00
4 Portable radio @ \$5,000 ea	\$20,000.00
4 Networking @ \$4000 ea	\$16,000.00
Shipping:	
4 @ \$500 ea	\$ 2,000.00
Categories Subtotal	\$298,000.00
Indirect Costs	
Grant Total	\$298,000.00

5.0 Payment Schedule

Grant No: _____
Project Name: Remote Dispatching Kits
Award Amount \$298,000

Clackamas County will invoice ODF for work performed under this Agreement no more frequently than once a month. Clackamas County agrees that invoices submitted for billing purposes **must contain the information exhibited in the Sample Invoice contained in Exhibit B.**



Cheryl Bledsoe, Director
Clackamas 911 (CCOM)
2200 Kaen Road, Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Motorola Solutions Inc. for
Maintenance and Equipment of the VESTA 911 Phone System Project**

Purpose/Outcome	Contract is for public safety equipment, installation, maintenance, support, and repair services for the Clackamas County, Department of Central Communications (CCOM). Clackamas County is required to comply with Oregon Emergency Management, referred to hereinafter as "State" standards as outlined in ORS 403.235 through ORS 403.245.
Dollar Amount and Fiscal Impact	\$600,000.00 Total Contract Value over 5 years.
Funding Source	Oregon Emergency Management and C-COM User Fees
Duration	5 years starting July 1, 2021, ending June 30, 2026
Previous Board Action/Review	Policy Session 6/1/2021
Strategic Plan Alignment	Ensure Safe, Healthy and Secure Communities by ensuring the upkeep & functionality of the telephony system that support the 911 system.
Counsel Review	1. May 24, 2021 2. Counsel Initials: AN
Procurement Review	Was the item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Cheryl Bledsoe, Director, Communications 971-284-3091
Contract No.	3903

Background:

The phone system is one of the mission-critical services to the delivery of 911 services to the residents of Clackamas County. The phone system, and its maintenance, is primarily funded by the Oregon Emergency Management 911 program's equipment subaccount. C-COM is responsible for approximately \$8K worth of these annual expenses. These costs are included in C-COM's annual budget which is shared across our member agencies. No county general funds are required to support this contract.

Procurement Process:

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0440, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #18-00196, The

Houston-Galveston Area Council Cooperative Agreement-Motorola Solutions, Inc.-Public Services. In accordance with C-046-0440, Procurement issued a notice of intent to purchase off of the cooperative on November 2, 2020 and May 24, 2021. No comments to the notice were received.

Recommendation:

Staff respectfully recommends approval of the Maintenance and Equipment of the VESTA 911 Phone System Project through Motorola Solutions Inc. Staff further recommends that the Board delegate authority to the Communications Director to sign agreements necessary in the ongoing performance of this Agreement.

Sincerely,



Cheryl Bledsoe,
Department Director

Placed on the BCC Agenda _____ by Procurement and Contract Services

CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract # 3903

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Emergency Communications department, and Motorola Solutions Inc. (“Contractor”). The Houston-Galveston Area Council Cooperative Agreement-Motorola Solutions, Inc.-Public Services #18-00196 is incorporated into this Addendum. (“Vendor Agreement”). As used below, "Contract" means this Addendum and the Vendor Agreement. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control.

Term. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2022**. The Contract may be renewed for four (4) additional one (1) year periods if, ninety (90) days prior to the then-expiration date, the Contractor provides a written quote to the County for the one-year renewal term, and the County accepts the new renewal term by the issuance of an official County purchase order. Except for the renewal term and associated fee, no other terms and conditions of the original Contract may be changed through this process. This Contract shall become effective upon signature of both parties.

Consideration. County will pay Contractor an annual maintenance fee for the Vesta 9-1-1 phone system. The first year maintenance fee is \$71,361.13, as identified in the attached Service Agreement dated March 18, 2021 and support renewal quote MOT3463129A-1 dated December 31, 2020. The total amount County will pay for annual maintenance for the Vesta 9-1-1 phone system during the initial term of this Contract shall not exceed Three Hundred Fifty Thousand (\$350,000.00). Contractor expressly understands and agrees that, as a result of certain agreements with the State of Oregon, payment of the annual maintenance fee for the Vesta 9-1-1 phone system may be made directly by the State of Oregon to the Contractor.

County may also purchase, on an as-needed basis, additional equipment and services at the rates set forth in the Vendor Agreement. The total amount County may pay for additional equipment and services shall not exceed Six Hundred Thousand (\$600,000.00). The County will issue purchase orders for any additional equipment and services in accordance with the terms and conditions of separate End User Agreements as described in Article 2 of the Special Provisions of the Vendor Agreement.

A. County Contract Administrator. The County Contract Administrator for this Contract is **Toni Sexton, 503-703-5885, Tsexton@clackamas.us**

B. Invoices and Payments. Invoices shall be submitted to Toni Sexton, Tsexton@clackamas.us.

Payment and late fees shall only be in accordance with ORS 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

C. Insurance. Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and the coverage indicated below. Contractor shall provide proof of said insurance and include the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.

<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
--

<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
--

Required – Automobile Liability: combined single limit, or the equivalent, of \$1,000,000 per occurrence for Bodily Injury and Property Damage.

The insurance described in this section shall not be cancelled without Contractor providing written notice to the County in accordance with insurance policy terms. This policy(s) shall be primary insurance as respects to the County. Insurance or self-insurance maintained by the County shall be excess and shall not contribute to it except to the extent claims arise out of the negligence of the County. Any obligation that County agree to a waiver of subrogation is hereby stricken.

D. Debt Limitation. The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

E. Public Contracting Requirements. Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.

Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

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

G. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

H. Compliance. Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans’ Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.

- I. Tax Compliance.** Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- J. Indemnification.** Contractor agrees to indemnify, hold harmless and defend the County, its officers, elected officials, agents and employees from and against all third-party claims and actions, and all reasonable expenses directly related to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of Contractor or Contractor's employees or agents in their performance of their duties under this Contract. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.
- K. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.
- L. Records.** Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.
- M. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- N. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- O. Waiver.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

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

Motorola Solutions, Inc.

Chris Lentz

Chris Lentz (May 21, 2021 10:37 PDT)

May 21, 2021

Authorized Signature

Date

Chris Lentz

Regional Director

Name/Title (Printed)

Clackamas County

Tootie Smith, Chair

Date

Recording Secretary

Date

Approved As To Form:

lay

May 24, 2021

Clackamas County Counsel

Date



SERVICE AGREEMENT

500 W Monroe St
Chicago, IL 60661
(800) 247-2346

Contract Number: USC000346196
Contract Modifier:

Date: 18-MAR-2021

<p>Company Name: Clackamas County Dispatch C-Com Attn.: Cheryl Bledsoe Billing Address: 2200 Kaen Rd City, State, Zip Code: Oregon City, OR 97045 Customer Contact: Cheryl Bledsoe Phone: 503-722-6708</p>
--

P.O.#: N/A
Customer #: 1011829085
Bill to Tag#: 0007
Contract Start Date: 15-MAR-2021
Contract End Date: 14-MAR-2022
Payment Cycle: ANNUALLY
Currency: USD

QTY	MODEL/OPTION	SERVICES DESCRIPTION	MONTHLY EXT	EXTENDED AMT
		***** Recurring Services *****		
	SVC01SVC2007C	ONSITE INFRA RESP-CUSTOM SOW	\$3,150.00	\$37,800.00
	SVC02SVC0082A	VESTA SOFTWARE FIRMWARE SUPPORT	\$2,038.56	\$24,462.67
	SVC02SVC0092A	VESTA MANAGED SERVICES	\$758.21	\$9,098.46
Sub Total			\$5,946.76	\$71,361.13
Taxes			\$0.00	\$0.00
Grand Total			\$5,946.76	\$71,361.13
SPECIAL INSTRUCTIONS - ATTACH STATEMENT OF WORK FOR PERFORMANCE DESCRIPTIONS			THIS SERVICE AMOUNT IS SUBJECT TO STATE AND LOCAL TAXING JURISDICTIONS WHERE APPLICABLE, TO BE VERIFIED BY MOTOROLA SOLUTIONS	

Subcontractor(s)	City	State
DAY MANAGEMENT CORP	Portland	OR
NG911 MAINT & SUPPORT	Temecula	CA

I received Statements of Work that describe the services provided on this Agreement. Motorola's Service Terms and Conditions, a copy of which is attached to this Service Agreement, is incorporated herein by this reference.

AUTHORIZED CUSTOMER SIGNATURE TITLE DATE

CUSTOMER (PRINT NAME)

MOTOROLA REPRESENTATIVE (SIGNATURE) Solutions Advisor TITLE 03/18/2021 DATE

JEFFREY BAUMAN
MOTOROLA REPRESENTATIVE (PRINT NAME)

312-898-0840
PHONE

Company Name : Clackamas County Dispatch
C-Com
Contract Number : USC000346196
Contract Modifier :
Contract Start Date : 15-MAR-2021
Contract End Date : 14-MAR-2022

Service Terms and Conditions

Motorola Solutions Inc. ("Motorola") and the customer named in this Agreement ("Customer") hereby agree as follows:

Section 1. APPLICABILITY

These Maintenance Service Terms and Conditions apply to service contracts whereby Motorola will provide to Customer either (1) maintenance, support, or other services under a Motorola Service Agreement, or (2) installation services under a Motorola Installation Agreement.

Section 2. DEFINITIONS AND INTERPRETATION

2.1. "Agreement" means these Maintenance Service Terms and Conditions; the cover page for the Service Agreement or the Installation Agreement, as applicable; and any other attachments, all of which are incorporated herein by this reference. In interpreting this Agreement and resolving any ambiguities, these Maintenance Service Terms and Conditions take precedence over any cover page, and the cover page takes precedence over any attachments, unless the cover page or attachment states otherwise.

2.2. "Equipment" means the equipment that is specified in the attachments or is subsequently added to this Agreement.

2.3. "Services" means those installation, maintenance, support, training, and other services described in this Agreement.

Section 3. ACCEPTANCE

Customer accepts these Maintenance Service Terms and Conditions and agrees to pay the prices set forth in the Agreement. This Agreement becomes binding only when accepted in writing by Motorola. The term of this Agreement begins on the "Start Date" indicated in this Agreement.

Section 4. SCOPE OF SERVICES

4.1. Motorola will provide the Services described in this Agreement or in a more detailed statement of work or other document attached to this Agreement. At Customer's request, Motorola may also provide additional services at Motorola's then-applicable rates for the services.

4.2. If Motorola is providing Services for Equipment, Motorola parts or parts of equal quality will be used; the Equipment will be serviced at levels set forth in the manufacturer's product manuals; and routine service procedures that are prescribed by Motorola will be followed.

4.3. If Customer purchases from Motorola additional equipment that becomes part of the same system as the initial Equipment, the additional equipment may be added to this Agreement and will be billed at the applicable rates after the warranty for that additional equipment expires.

4.4. All Equipment must be in good working order on the Start Date or when additional equipment is added to the Agreement. Upon reasonable request by Motorola, Customer will provide a complete serial and model number list of the Equipment. Customer must promptly notify Motorola in writing when any Equipment is lost, damaged, stolen or taken out of service. Customer's obligation to pay Service fees for this Equipment will terminate at the end of the month in which Motorola receives the written notice.

4.5. Customer must specifically identify any Equipment that is labeled intrinsically safe for use in hazardous environments.

4.6. If Equipment cannot, in Motorola's reasonable opinion, be properly or economically serviced for any reason, Motorola may modify the scope of Services related to that Equipment; remove that Equipment from the Agreement; or increase the price to Service that Equipment.

4.7. Customer must promptly notify Motorola of any Equipment failure. Motorola will respond to Customer's notification in a manner consistent with the level of Service purchased as indicated in this Agreement.

Section 5. EXCLUDED SERVICES

5.1. Service excludes the repair or replacement of Equipment that has become defective or damaged from use in other than the normal, customary, intended, and authorized manner; use not in compliance with applicable industry standards;

excessive wear and tear; or accident, liquids, power surges, neglect, acts of God or other force majeure events.

5.2. Unless specifically included in this Agreement, Service excludes items that are consumed in the normal operation of the Equipment, such as batteries or magnetic tapes.; upgrading or reprogramming Equipment; accessories, belt clips, battery chargers, custom or special products, modified units, or software; and repair or maintenance of any transmission line, antenna, microwave equipment, tower or tower lighting, duplexer, combiner, or multicoupler. Motorola has no obligations for any transmission medium, such as telephone lines, computer networks, the internet or the worldwide web, or for Equipment malfunction caused by the transmission medium.

Section 6. TIME AND PLACE OF SERVICE

Service will be provided at the location specified in this Agreement. When Motorola performs service at Customer's location, Customer will provide Motorola, at no charge, a non-hazardous work environment with adequate shelter, heat, light, and power and with full and free access to the Equipment. Waivers of liability from Motorola or its subcontractors will not be imposed as a site access requirement. Customer will provide all information pertaining to the hardware and software elements of any system with which the Equipment is interfacing so that Motorola may perform its Services. Unless otherwise stated in this Agreement, the hours of Service will be 8:30 a.m. to 4:30 p.m., local time, excluding weekends and holidays. Unless otherwise stated in this Agreement, the price for the Services exclude any charges or expenses associated with helicopter or other unusual access requirements; if these charges or expenses are reasonably incurred by Motorola in rendering the Services, Customer agrees to reimburse Motorola for those charges and expenses.

Section 7. CUSTOMER CONTACT

Customer will provide Motorola with designated points of contact (list of names and phone numbers) that will be available twenty-four (24) hours per day, seven (7) days per week, and an escalation procedure to enable Customer's personnel to maintain contact, as needed, with Motorola.

Section 8. INVOICING AND PAYMENT

8.1 Customer affirms that a purchase order or notice to proceed is not required for the duration of this service contract and will appropriate funds each year through the contract end date. Unless alternative payment terms are stated in this Agreement, Motorola will invoice Customer in advance for each payment period. All other charges will be billed monthly, and Customer must pay each invoice in U.S. dollars within twenty (20) days of the invoice date.

8.2 Customer will reimburse Motorola for all property taxes, sales and use taxes, excise taxes, and other taxes or assessments that are levied as a result of Services rendered under this Agreement (except income, profit, and franchise taxes of Motorola) by any governmental entity. The Customer will pay all invoices as received from Motorola. At the time of execution of this Agreement, the Customer will provide all necessary reference information to include on invoices for payment in accordance with this Agreement.

8.3 For multi-year service agreements, at the end of the first year of the Agreement and each year thereafter, a CPI percentage change calculation shall be performed using the U.S. Department of Labor, Consumer Price Index, all Items, Unadjusted Urban Areas (CPI-U). Should the annual inflation rate increase greater than 3% during the previous year, Motorola shall have the right to increase all future maintenance prices by the CPI increase amount exceeding 3%. All items, not seasonally adjusted shall be used as the measure of CPI for this price adjustment. Measurement will take place once the annual average for the New Year has been posted by the Bureau of Labor Statistics. For purposes of illustration, if in year 5 the CPI reported an increase of 8%, Motorola may increase the Year 6 price by 5% (8%-3% base)

Section 9. WARRANTY

Motorola warrants that its Services under this Agreement will be free of defects in materials and workmanship for a period of ninety (90) days from the date the performance of the Services are completed. In the event of a breach of this warranty, Customer's sole remedy is to require Motorola to re-perform the non-conforming Service or to refund, on a pro-rata basis, the fees paid for the non-conforming Service. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 10. DEFAULT/TERMINATION

10.1. If either party defaults in the performance of this Agreement, the other party will give to the non-performing party a written and detailed notice of the default. The non-performing party will have thirty (30) days thereafter to provide a written plan to cure the default that is acceptable to the other party and begin implementing the cure plan immediately after plan approval. If the non-performing party fails to provide or implement the cure plan, then the injured party, in addition to any other rights available to it under law, may immediately terminate this Agreement effective upon giving a written notice of

termination to the defaulting party.

10.2. Any termination of this Agreement will not relieve either party of obligations previously incurred pursuant to this Agreement, including payments which may be due and owing at the time of termination. All sums owed by Customer to Motorola will become due and payable immediately upon termination of this Agreement. Upon the effective date of termination, Motorola will have no further obligation to provide Services.

10.3 If the Customer terminates this Agreement before the end of the Term, for any reason other than Motorola default, then the Customer will pay to Motorola an early termination fee equal to the discount applied to the last three (3) years of Service payments for the original Term.

Section 11. LIMITATION OF LIABILITY

Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of twelve (12) months of Service provided under this Agreement. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement and applies notwithstanding any contrary provision.

Section 12. EXCLUSIVE TERMS AND CONDITIONS

12.1. This Agreement supersedes all prior and concurrent agreements and understandings between the parties, whether written or oral, related to the Services, and there are no agreements or representations concerning the subject matter of this Agreement except for those expressed herein. The Agreement may not be amended or modified except by a written agreement signed by authorized representatives of both parties.

12.2. Customer agrees to reference this Agreement on any purchase order issued in furtherance of this Agreement, however, an omission of the reference to this Agreement will not affect its applicability. In no event will either party be bound by any terms contained in a Customer purchase order, acknowledgement, or other writings unless: the purchase order, acknowledgement, or other writing specifically refers to this Agreement; clearly indicate the intention of both parties to override and modify this Agreement; and the purchase order, acknowledgement, or other writing is signed by authorized representatives of both parties.

Section 13. PROPRIETARY INFORMATION; CONFIDENTIALITY; INTELLECTUAL PROPERTY RIGHTS

13.1. Any information or data in the form of specifications, drawings, reprints, technical information or otherwise furnished to Customer under this Agreement will remain Motorola's property, will be deemed proprietary, will be kept confidential, and will be promptly returned at Motorola's request. Customer may not disclose, without Motorola's written permission or as required by law, any confidential information or data to any person, or use confidential information or data for any purpose other than performing its obligations under this Agreement. The obligations set forth in this Section survive the expiration or termination of this Agreement.

13.2. Unless otherwise agreed in writing, no commercial or technical information disclosed in any manner or at any time by Customer to Motorola will be deemed secret or confidential. Motorola will have no obligation to provide Customer with access to its confidential and proprietary information, including cost and pricing data.

13.3. This Agreement does not grant directly or by implication, estoppel, or otherwise, any ownership right or license under any Motorola patent, copyright, trade secret, or other intellectual property, including any intellectual property created as a result of or related to the Equipment sold or Services performed under this Agreement.

Section 14. FCC LICENSES AND OTHER AUTHORIZATIONS

Customer is solely responsible for obtaining licenses or other authorizations required by the Federal Communications Commission or any other federal, state, or local government agency and for complying with all rules and regulations required by governmental agencies. Neither Motorola nor any of its employees is an agent or representative of Customer in any governmental matters.

Section 15. COVENANT NOT TO EMPLOY

During the term of this Agreement and continuing for a period of two (2) years thereafter, Customer will not hire, engage on contract, solicit the employment of, or recommend employment to any third party of any employee of Motorola or its subcontractors without the prior written authorization of Motorola. This provision applies only to those employees of Motorola or its subcontractors who are responsible for rendering services under this Agreement. If this provision is found to be overly broad under applicable law, it will be modified as necessary to conform to applicable law.

Section 16. MATERIALS, TOOLS AND EQUIPMENT

All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by Motorola for the purpose of this Agreement will be and remain the sole property of Motorola. Customer will safeguard all such property while it is in Customer's custody or control, be liable for any loss or damage to this property, and return it to Motorola upon request. This property will be held by Customer for Motorola's use without charge and may be removed from Customer's premises by Motorola at any time without restriction.

Section 17. GENERAL TERMS

17.1. If any court renders any portion of this Agreement unenforceable, the remaining terms will continue in full force and effect.

17.2. This Agreement and the rights and duties of the parties will be interpreted in accordance with the laws of the State in which the Services are performed.

17.3. Failure to exercise any right will not operate as a waiver of that right, power, or privilege.

17.4. Neither party is liable for delays or lack of performance resulting from any causes that are beyond that party's reasonable control, such as strikes, material shortages, or acts of God.

17.5. Motorola may subcontract any of the work, but subcontracting will not relieve Motorola of its duties under this Agreement.

17.6. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer. In addition, in the event Motorola separates one or more of its businesses (each a "Separated Business"), whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Motorola may, without the prior written consent of the other Party and at no additional cost to Motorola, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Motorola and its affiliates, to the extent applicable) following the Separation Event.

17.7. THIS AGREEMENT WILL RENEW PURSUANT TO THE TERMS AND CONDITIONS OF THE GOVERNMENT ADDENDUM EXECUTED CONTEMPORANEOUSLY HEREWITH. At the anniversary date, Motorola may adjust the price of the Services to reflect its current rates pursuant to Section 8.3 of this Agreement.

17.8. If Motorola provides Services after the termination or expiration of this Agreement, the terms and conditions in effect at the time of the termination or expiration will apply to those Services and Customer agrees to pay for those services on a time and materials basis at Motorola's then effective hourly rates.

17.9 This Agreement may be executed in one or more counterparts, all of which shall be considered part of the Agreement. The parties may execute this Agreement in writing, or by electronic signature, and any such electronic signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, an electronic signature, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.



OFFICE OF COUNTY COUNSEL

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

Stephen L. Madkour
County Counsel

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

June 16, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

DESIGNATION OF NEWSPAPER FOR 2021
PROPERTY TAX FORECLOSURE PUBLICATION

Purpose/Outcomes	To institute tax foreclosure proceedings and comply with Oregon statute to serve notice of intent.
Dollar Amount and Fiscal Impact	Costs of publications are included in the Assessment and Taxation 2021-2022 budget.
Funding Source	A&T Legal Notices budget
Duration	Not applicable.
Previous Board Action	Board approval annually at the end of June.
Counsel Review	5/25/21
Contact Person	Anja Mundy, County Counsel x 5396

Background:

To institute foreclosure proceedings, the County is required by Oregon statute to serve notice of intent to foreclose, either by certified mail and publication or in person. The County has chosen the first method and rotates publication of the foreclosure list among the two County newspapers that historically have the greatest circulation: The Clackamas Review and the Lake Oswego Review. This year, the newspaper proposed for publication is the Lake Oswego Review.

County Tax Foreclosure is not subject to any executive order passed by Governor Brown during the COVID-19 epidemic.

The cost of publication in 2020 was \$1,066.55. The projected cost of publication in the Clackamas Review will be similar, but is dependent on the length of the foreclosure

list. The cost is included in the Assessment and Taxation's 2021-2022 budget Legal Notices.

Recommendation:

Staff recommends the Board of County Commissioners approve the designation of the Lake Oswego Review to publish the 2021 tax foreclosure list.

Respectfully submitted,

A handwritten signature in blue ink that reads "Kathleen J. Rastetter". The signature is written in a cursive style with a large initial 'K'.

Kathleen Rastetter
Sr. Legal Counsel



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

May 20, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Service Level Agreements between
Clackamas Broadband eXchange and Link Oregon

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval to enter into a Service Level Agreement (SLA) with Link Oregon that will serve Clackamas County Extension and 4-H Service District (CC4H) for a dark fiber connection.
Dollar Amount and Fiscal Impact	Link Oregon will pay a non-recurring fee of \$2,400.00 for the new fiber construction and pay an annual recurring lease fee of \$3,060.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by Link Oregon.
Duration	Effective upon signature by the board the SLA is effective for one (1) year that automatically renews for successive one-year renewal terms but the contract shall not exceed a total of five (5) years.
Previous Board Action	Board previously approved CBX to build and maintain a similar fiber connections for Astound Broadband, LLC on February 16, 2020.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Counsel Review	Andrew Naylor, May 13, 2021
Contact Person	Dave Devore (503)723-4996
Contract No.	N/A

BACKGROUND:

CBX is proposing to build a new dark fiber connection to extend the CBX network to the Oregon State Extension building on the Red Soils campus in Oregon City. This new dark fiber connection will create a circuit for Oregon State University to connect back into the state wide educational network located at Clackamas Educational Service District. The agreement is with Link Oregon that serves all of the State of Oregon universities with their technology needs.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this Service Level Agreements. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Oregon Fiber Partnership, dba Link Oregon
(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Oregon Fiber Partnership, dba Link Oregon (Customer) the services set forth in this Agreement (the “Services”), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Oregon State University (OSU) is a founding member of the Oregon Fiber Partnership, dba Link Oregon (Customer); which provides network services to OSU and its CCES, through its Division of Extension and Engagement; and

WHEREAS, Customer desires to provision the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber (“Fiber”), between sites specifically identified in Appendix A for the exclusive use of the Customer’s internal communication needs. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

4. Construction and Installation Requirements

- a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from

the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not contain hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. Test results for physical connection will be made available to Customer upon request.

5. Term of Agreement

Upon execution by both parties, this Agreement is effective on July 1, 2021. At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use. Unless terminated as herein provided, this Agreement shall continue for a period of one (1) year and shall automatically renew for successive one-year renewal terms, at the County's then-current rate schedule, unless either party terminates the Agreement pursuant to the terms herein. Provided, however, that the total Agreement term length, including any renewal, shall not exceed five (5) years.

6. Rates

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services described in Appendix A, as amended from time to time.

7. **Payment**

Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. Failure of Customer to pay within thirty (30) days of receipt of an invoice shall constitute an event of default and County may pursue any remedies provided in this Agreement including, but not limited to, terminating the Agreement upon appropriate advance written notice to Customer.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

10. **Content Control and Privacy**

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the

Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligent acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER

OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 days'

written notice to the other party.

- b. Pursuant to Section 20 of this Agreement, either party may terminate this Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:
 - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
 - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Remedies

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

22. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

23. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

24. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or

by United States certified or registered mail, with postage prepaid, or by electronic mail as follows:

Notice to the County

Manager, Clackamas Broadband eXchange
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
ddexter@clackamas.us
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
cbxinfo@co.clackamas.or.us
Fax Number: (503) 655-8255

Notice to the Customer

Tina Kirk
Business Manager
PO Box 13309
Portland, OR 97213
(503) 744-1304
billing@linkoregon.org

Either Party, by similar written notice, may change the address to which notices shall be sent.

25. Debt Limitations

This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

26. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

27. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the

State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

28. Survival

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, 28, and 30, and all other rights and obligations which by their context are intended to survive.

29. Severability

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

30. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

Customer

Oregon Fiber Partnership, dba Link Oregon
(Customer Name)

By (signature): *S. C. Corbato*

Name (print): Steven C. Corbato

Title: Executive Director

Date: May 18, 2021

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1	Oregon Fiber Partnership at Clackamas County Extension and 4-H Service District 200 Warner Milne Rd Oregon City, OR 97045	Clackamas Educational Services District 13455 SE 97thAve Clackamas, OR 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

	From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Amount (\$)
1	Oregon Fiber Partnership at Clackamas County Extension and 4-H Service District 200 Warner Milne Rd Oregon City, OR 97045	Clackamas Educational Services District 13455 SE 97thAve Clackamas, OR 97015	Construction	\$2,400.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. “Routine Maintenance” is all preventive maintenance activities and repairs.
- b. “Non-Routine Maintenance” is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County’s NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM’s remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer’s personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County’s technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

- 5.** Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

Remainder of this page intentionally left blank.






CBX agreement to support the Clackamas County Extension site

Final Audit Report

2021-05-19

Created:	2021-05-18
By:	Molly Thurston (molly@nwacc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAkYhOj91ZD9XMGqeyVI-KEfZ5KGnCASM3

"CBX agreement to support the Clackamas County Extension site" History

-  Document created by Molly Thurston (molly@nwacc.org)
2021-05-18 - 4:16:09 PM GMT- IP address: 73.164.240.50
-  Document emailed to Steven C. Corbato (corbato@linkoregon.org) for signature
2021-05-18 - 4:16:59 PM GMT
-  Email viewed by Steven C. Corbato (corbato@linkoregon.org)
2021-05-18 - 4:21:32 PM GMT- IP address: 76.115.184.21
-  Document e-signed by Steven C. Corbato (corbato@linkoregon.org)
Signature Date: 2021-05-19 - 0:38:43 AM GMT - Time Source: server- IP address: 76.115.184.21
-  Agreement completed.
2021-05-19 - 0:38:43 AM GMT



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

June 1, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approve a Non-Disclosure Agreement between Clackamas Broadband eXchange and Verizon Business Network Services, Inc.

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) and Verizon need a Non-Disclosure Agreement signed so they can share network information with one another.
Dollar Amount and Fiscal Impact	None.
Funding Source	N/A
Duration	Effective for two (2) years from the date the NDA is fully signed.
Previous Board Action	Board approved an NDA with Verizon on June 11 th , 2020.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. This item follows the Board's Key Initiatives of making high speed internet available throughout the County.
Counsel Review	Andrew Naylor, March 3, 2021
Contact Person	Dave Devore (503) 723-4996
Contract Number	N/A

BACKGROUND:

Clackamas Broadband eXchange is pursuing partnerships and operational cooperation from other communications providers. Verizon is willing to share detailed information and have these discussions with staff in CBX but only if they are subject to a Non-Disclosure Agreement.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Non-Disclosure Agreement.

Sincerely,

Dave Cummings
CIO Technology Services

NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT (“Agreement”), is made and entered into as of the date of full execution by the Parties (“Effective Date”) by and between THE COUNTY OF CLACKAMAS, a government entity ("County") of the State of Oregon and Verizon Business Network Services Inc., a Delaware corporation with its principal offices at One Verizon Way, Basking Ridge, New Jersey, 07920 (“VBNS”) and its affiliates (defined as an entity controlling, majority-owned, controlled or under common voting control with VBNS, or a contractual or joint venture partner, possessing, whether by contract or otherwise, similar rights or obligations (individually or collectively, the "Company"). County and the Company may be referred to herein collectively as the “Parties” and individually as a “Party”.

WHEREAS, the Parties desire to engage in discussions concerning the deployment of wireless and wireline network infrastructure in the County, among other related matters;

WHEREAS, the Parties may provide Confidential Information (as defined below) to one another to understand the wireless and wireline network deployment;

NOW, THEREFORE, in consideration of the foregoing, County and Company hereby agree as follows:

1. Notwithstanding anything to the contrary, County’s obligations under this Agreement are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes (“ORS”) Chapter 192 *et. seq.*, and any other applicable state or federal law. Company asserts that Confidential Information, defined below, submitted pursuant to this Agreement is exempt from disclosure under one or more exceptions including, but not limited to: ORS 192.345(2) (trade secrets) and ORS 192.354(4) (confidential submissions). While County will make good faith efforts to perform under this Agreement, County’s disclosure of Confidential Information, in whole or in part, will not be a breach of the Agreement if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If County is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, County shall notify Company within a reasonable period of time of the request. Company is exclusively responsible for defending Company’s position concerning the confidentiality of the requested information. County is not required to assist the Company in opposing disclosure of Confidential Information. Notices under this provision shall be sent to donna.barrett@verizonwireless.com.

2. “Confidential Information” means information not generally known to the public, marked confidential and which is maintained by either of the Parties as confidential, and is reasonably considered confidential, whether of a technical, business or other nature that relates to the infrastructure and network deployment or a potential agreement between the County and the Company. Other information, although not necessarily directly related to the infrastructure and network deployment or a potential agreement between County and Company, is nevertheless disclosed as a result of the Parties’ discussions, and is marked confidential or proprietary because of: (i) legends or other markings, the Parties may provide Confidential Information in written or tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. Confidential Information may also, without limitation, include confidential or proprietary documents, plans, records, reports, correspondence, applications, data and any and all other sources of information. If the Confidential

Information is provided orally, it shall be deemed to be confidential or proprietary if identified as such by the Parties at the time it is provided. Confidential Information shall not include information that is in the public domain, information that the Parties independently and lawfully obtain and/or information that either Party obtains by a court order.

3. By submitting the Confidential Information, the Parties do not grant to one another or any third party any license, explicitly or implicitly, under any trademark, patent, copyright, mask work, protection right, trade secret or any other intellectual property right, except for the uses identified herein. Further, any submittal of the Confidential Information does not constitute or imply any commitment, promise, or inducement by the Company or County to enter into any further agreements.
4. Except as otherwise required by law, the Confidential Information and information derived directly from the Confidential Information related to the infrastructure network will be used solely for the purpose of evaluating the infrastructure and network deployment or a potential agreement between the County and the Company. The Parties and any party to whom the Confidential Information is furnished as provided herein, shall keep the Confidential Information confidential and shall not disclose the Confidential Information to any third persons except as required by law or as permitted pursuant to the terms set forth in this Agreement.
5. The Parties may disclose the Confidential Information or portions thereof only to the persons to whom such disclosure is permissible (collectively, the "Representatives") as follows: (i) officers, employees and legal counsel of the Parties on a need-to-know basis; or (ii) other state agencies, local governments or local development authorities and their respective officers and employees, whose assistance may be requested or required in connection with evaluating infrastructure and network deployment or a potential agreement between County and the Company; (iii) or as otherwise allowed by the terms of this Agreement. Prior to providing any of the Confidential Information to the Representatives, the Parties shall advise any and all of the Representatives of the confidential nature of the Confidential Information and require each such Representative to comply with the requirements of this Agreement.
6. Any person who is provided with Confidential Information shall make best efforts to fully protect the Confidential Information, including but not limited to (i) if the Confidential Information contains hard copies, to keep that Confidential Information in a locked location and to restrict access to anyone who does not have permission to review the Confidential Information; and (ii) if Confidential Information is in digital format, to maintain the Confidential Information in a system with encryption and to restrict access to anyone who does not have permission to review the Confidential Information.
7. Neither Party shall issue any press releases announcing the infrastructure and network deployment or any potential agreement between County and Company or make any similar affirmative announcement to any third person unless the other party provides written consent or if compelled by law, subject to the provisions of Paragraph 9 below.
8. County agrees and acknowledges as follows: (i) the Confidential Information provided by Company to County is owned by Company, and (ii) that breach of this Agreement may cause significant harm to Company.
9. Each actual breach of this Agreement herein shall generate a claim in favor of the other Party that the other Party may assert against the breaching Party. Upon such breach, the other Party shall be authorized to seek all remedies available at law or in equity, including actual and punitive damages, injunctive relief and specific performance. The Parties agree that monetary damages may not be

adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Agreement.

10. This Agreement will expire upon the earlier of (i) two (2) years from the Effective Date or (ii) upon the completion of the infrastructure and network deployment or execution of an agreement between the County and Company. If a subsequent agreement is executed that contains a confidentiality provision, the terms and conditions of that agreement shall govern the issues of non-disclosure and confidentiality. Upon written request made by the Company or in the event this Agreement expires without a subsequent agreement, County shall have thirty (30) days to either (i) promptly return to Company all Confidential Information, all copies thereof, and any notes, reports, compilations, records, or similar documents derived or made therefrom, or (ii) agree with Company upon appropriate methods and certification of destruction or other disposition of the foregoing. Notwithstanding such expiration or termination, all of the Parties' non-disclosure obligations under this Agreement will survive with respect to any Confidential Information received prior to such expiration or termination unless a subsequent agreement is in effect in which case it shall govern.
11. This Agreement also applies to Confidential Information related to the wireless and wireline infrastructure already disclosed to County and County represents that Confidential Information disclosed prior to the Effective Date has not been disclosed to any third persons. Any previously disclosed Confidential Information is subject to the terms and conditions of this Agreement.
12. No failure or delay by Company or County to exercise any right, power or privilege hereunder will operate as a waiver, nor will any single or partial exercise preclude any other or further exercise.
13. This Agreement shall be binding upon and inure to the benefit of County and Company and their respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without reference to its conflict of law provisions. Any claim between County and Company that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
14. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same agreement.
15. This Agreement contains the entire agreement and understanding concerning the subject matter hereof between County and Company and may not be amended except by a writing executed by both County and Company.
16. Except as expressly provided herein, nothing in this Agreement creates, implies or evidences any partnership or joint venture between the Parties, or the relationship between them of principal and agent. No Party has any authority to make any representation or commitment, or to incur any liability, on behalf of the others.
17. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the others that the execution and delivery of the Agreement and the performance of such Party's obligations

hereunder have been duly authorized.

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

IN WITNESS WHEREOF, County and Company have executed this Agreement which is effective as of the Effective Date.

COUNTY OF CLACKAMAS

By: _____

Name: _____

Title: _____

Date: _____

VERIZON BUSINESS NETWORK SERVICES INC.

By: _____

Name: _____

Title: _____

Date: _____



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES

PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

June 3, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Labor Contract Between The County of Clackamas and the
Clackamas County Peace Officers' Association (POA)

Purpose/Outcomes	Settlement of labor contract
Dollar Amount and Fiscal Impact	\$7,469,639 (for the life of the contract)
Funding Source	General Fund
Duration	July 1, 2020 – June 30, 2023
Previous Board Action	June 1, 2021 - Executive Session
Strategic Plan Alignment	Build public trust through good government.
Contact Person	Eric Sarha, HR Assistant Director 503-655-8292
Contract No.	N/A

BACKGROUND:

The Department of Human Resources has concluded negotiations with the Clackamas County Peace Officers' Association. The Union membership has voted to ratify the contract for July 1, 2020 through June 30, 2023. The agreement that was ratified by the Union is attached.

The significant wage and contract language changes are outlined below:

Pay

Cost of Living Adjustment (COLA)

- For fiscal year 2020-21, 2.6% effective the first day of the pay period after the ratification date. In lieu of retroactive pay, employees shall receive a lump sum payment equivalent to 2.6% from July 1, 2020 to ratification date. (Year One Fiscal Impact \$1,212,233)
- For fiscal year 2021-22, 1.8% effective the first payroll period after July 1, 2021. (Year Two Fiscal Impact \$861,058)
- For fiscal year 2022-23, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%. (Estimated at 2.5% - Year Three Fiscal Impact \$1,217,441)
- Total COLA Fiscal Impact for the Life of Contract: \$6,576,255

Holiday Pay

Added the Juneteenth holiday as adopted by the Board on July 9, 2020:

Fiscal Impact (life of contract): \$482,088

Upon ratification, each employee shall receive one (1) additional personal leave day for the 2021 and 2022 calendar years:

Fiscal Impact: \$324,879

Special Assignments

Rotational Detective. Upon beginning work in the assignment the Deputy will be paid five percent (5%) above their base-hourly rate:

Fiscal Impact (life of contract): \$8,566

Incentive Program

Detectives who are assigned full-time to the cities of Happy Valley or the City of Wilsonville. Employees shall receive premium pay in the amount of five percent (5%) of the employee's base pay.:

Fiscal Impact (life of contract): \$28,333

Any employee assigned the collateral duty of a Forensic Artist shall receive premium pay in the amount of one percent (1%) of the employee's base pay.:

Fiscal Impact (life of contract): \$2,879

Equipment

Vests: the County will provide up to \$125 for upgrades at the time of replacement or new purchase.:

Fiscal Impact: \$35,875

Legal Defense Fund

Increased County contribution from \$4.50 to \$6.00 per month toward the premium.

Fiscal Impact (life of contract): \$10,764

RECOMMENDATION:


Staff recommends the Board approve the attached contract for the Clackamas County Peace Officers' Association.

Respectfully submitted,


Evelyn Minor Lawrence, HR Director
Clackamas County Director of Human Resources
Direct line: 503-655-8812; Email: ELawrence2@clackamas.us

IN WITNESS THEREOF, the parties hereto set their hands thus _____ day
of _____, 2021.

FOR THE UNION:



Stephen Steinberg
President, CCPOA




Anil Karia
Attorney

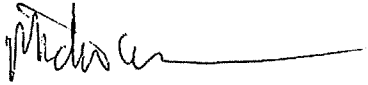
FOR THE COUNTY:

Tootie Smith
BCC Chair

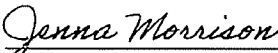
Recording Secretary




Angie Brandenburg
Sheriff




Michael Copenhaver
Undersheriff



Jenna Morrison
Chief Deputy



Lee Eby
Captain



Jeff Smith
Lieutenant

Eric Sarha
HR Deputy Director

AGREEMENT
Between
CLACKAMAS COUNTY, OREGON



And

Clackamas County
Peace Officers Association

PEACE OFFICERS
ASSOCIATION



Clackamas County

July 1, 2020 – June 30, 2023

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AGREEMENT
between
CLACKAMAS COUNTY, OREGON
and
CLACKAMAS COUNTY PEACE OFFICERS ASSOCIATION

PREAMBLE

This Agreement is entered into by Clackamas County, Oregon hereinafter referred to as the County, and the Clackamas County Peace Officers Association, hereinafter referred to as the Association.

The parties agree as follows:

ARTICLE 1 – RECOGNITION

Section 1. The County recognizes the Association as the exclusive bargaining agent for the purpose of establishing wages, hours and other conditions of employment for all of the classified County employees in the Sheriff’s Office, Investigators in the District Attorney’s Office, and Deputy Medical Examiners and Strategic Program Coordinators in the Department of Disaster Management, working twenty or more hours per week.

The bargaining unit excludes supervisory employees including Lieutenants and those with higher rank, confidential, and unclassified including temporary or limited term duration employees.

Classified and unclassified positions are those as identified by County Code 2.05.

Section 2. When any bargaining unit classification not listed on the Wage Schedule is established, the County shall designate a pay rate for the position. In the event the Association does not agree that the rate is proper, the County will negotiate with the Association over the wage rate and any disagreement over the wage rate will be submitted to the impasse resolution consistent with ORS 243.698. In such case, the County is not precluded from filling the position at the posted wage rate; however, the County acknowledges the obligation to bargain and honor any interest arbitration award.

Section 3. Consistent with the PECBA requirements related to information requests, the Association may request information from the Sheriff’s Office regarding the utilization of temporary employees, also known as unallocated positions, by the Sheriff’s Office, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions. The Sheriff’s Office will respond to the Association’s information request within a reasonable time per PECBA requirements. Upon reasonable request by the Association, the Association and Sheriff’s Office will meet at a mutually agreeable time to discuss the Sheriff’s use of temporary employees, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions.

ARTICLE 2 – PRESERVATION OF PUBLIC RIGHTS

Section 1. The Association recognizes that an area of responsibility must be reserved to the County if County government is to effectively serve the public. Therefore, the County shall have full and complete right to manage and direct its business and it is recognized that the following responsibilities of management are exclusively functions to be exercised by the County and are not subject to negotiations insofar as this right does not affect the meaning, interpretation or application of any other term of this Agreement.

1. The determination of the governmental services to be rendered to the citizens of Clackamas County, Oregon.
2. The determination of the County's financial, budgetary and accounting procedures.
3. The management and direction of the work force including, but not limited to, the right to determine the methods, processes and manner of performing work; the right to hire, promote, transfer within the same pay range and retain employees; the right to discipline or discharge for proper cause; the right to lay off for lack of funds; the right to establish or abolish positions or reorganize the departments or division; the right to determine schedules of work; the right to purchase, dispose and assign equipment or supplies; and the right to contract or subcontract any work.

Section 2. The County, in exercise of the above mentioned functions, will not discriminate against any employee because of their membership in the Association or in the exercise of rights protected by this contract, including the right to file grievances or to request Association representation.

Section 3. The County and the Association for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or any other subject matter except as provided in Article 3, Existing Conditions.

ARTICLE 3 – EXISTING CONDITIONS

Matters of employment relations, as defined by PECBA, including but not limited to, direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment that are not referred to or covered by other provisions of this Agreement shall be continued at not less than the level in effect at the time of the signing of this Agreement. Any changes in those existing employment relations during the term of the Agreement shall be negotiated with the Association in accordance with ORS 243.698.

ARTICLE 4 – HOURS OF WORK

Section 1. Regular Hours and Workday.

The regular hours of work each day shall be consecutive. The workday shall consist of current prevailing consecutive hours of work scheduled, provided that changes to shift starting times that are required for justifiable business reasons may be made at the time of

regular semi-annual seniority shift-bid without bargaining the change with the Association. All employees shall be scheduled to work on a regular shift and each shift shall have a regular starting and quitting time except for emergency situations.

Motors and Canine Units:

The workday for Motor and Canine Units commences and ends upon arrival and departure from the County, except that the workday for Motor Units and Canine Units assigned to contract cities commences and ends upon arrival and departure from the contract city limits. When a Motor Unit employee agrees to work a voluntary overtime shift on days off for special events, work time starts upon the employee's arrival at the event and ends upon the employee's departure from the event. Shift starting times and days for Motor Units may be altered by the County for justifiable business reasons at the time of regular semi-annual seniority shift bid without bargaining the change with the Association. Shift bid posting for Motors will include work hours and days off but need not include district assignments or city assignment.

Deputies may be assigned to Canine duties at the discretion of the County. It is anticipated that Canine Deputies will provide routine care of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that 4 hours per week (34 minutes a day) is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

Section 2. Workweek. Non-continuous Operations.

The workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, except for employees covered by another workweek schedule listed within this Article or as outlined in the job assignment posting.

Section 3. Workweek. Continuous Operations.

The workweek for employees engaged in continuous operations shall consist of consecutive days.

Employees engaged in continuous operations are defined as being any employee or group of employees engaged in an operation for which there is regularly scheduled work for twenty-four (24) hours a day, seven (7) days a week such as but not limited to Patrol, Records and Corrections.

Section 4. Four (4) Ten (10) Work Schedule.

It is mutually agreed that the County may employ employees on a four (4) day work week ten (10) hour a day basis, referred to as the 4/10 schedule, rather than those hours set forth above in this Article. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Section 5. 3-12/3-12 + 8 Hour Work Schedule.

The 3-12/3-12 + 8 work schedule shall consist of one work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, followed by four (4) days off, and the other work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, with an eight (8) hour work day, followed by three (3) days off. This schedule may begin with either the long or the short work week. Employees assigned this schedule are subject to the section 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 80 hours in the 14-day period. Overtime on a daily basis will be paid as provided in Article 13. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Section 6. 5-9/4-9 Work Schedule.

The 5-9/4-9 work schedule shall consist of five (5) consecutive nine (9) hour workdays followed by two (2) consecutive days off, followed by four (4) consecutive nine (9) hour workdays, followed by three (3) consecutive days off. During the 4-9 work week, Friday shall be the first of the three consecutive days off. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Pursuant to the 5-9/4-9 schedule, the parties agree that employees assigned to this schedule are subject to the 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 81 hours in the 14-day period. Overtime on a daily basis will be paid for hours worked exceeding nine (9).

Section 7. 9-80 Work Schedule.

The 9-80 work schedule is as follows:

For the purposes of this 9-80 schedule, the work week will be defined from 12:00 p.m. on Friday to 11:59 a.m. the following Friday. The schedule is one (1) week of four (4) consecutive nine (9) hour workdays and a fifth day of a four (4) hour shift. The new work week starts thereafter on the same day followed by another four (4) hour shift, two (2) days off, and one (1) week of four (4) consecutive nine (9) hour workdays, with the following fifth day off.

The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Section 8. School Resource Officers.

During the school year, School Resource Officers (SRO) shall work a five (5) day work week, eight (8) hours a day schedule, Monday through Friday. The SRO's may be assigned to a four (4) day work week, ten (10) hours a day with either Friday through Sunday off or Saturday through Monday off depending upon the needs of the specific school and/or Sheriff's Office. School Resource Officers will be assigned to day shift but may request an alternative shift and/or alternative days off. Notification of their Summer schedule shall be given at least thirty (30) days prior to the change unless mutually agreed to be shorter.

When a school holiday and a County holiday are the same, the SRO will have that day off. On days when students are not present, (unless the school requests their presence), the SRO's will report to patrol for their regular working hours.

Section 9. Schedule of Deputy Medical Examiners.

See Article 38.

Section 10. Shift Trading.

For employees who agree to trade shifts for one day, the traded shift becomes each employee's assigned shift. Failure to work the shift will have the same consequences as if the employee did not work the employee's regular shift. Shift trades may be made only between employees working in the same capacity, must be voluntarily agreed to by the employees involved, and must be approved by management after being fully informed of the trade and before the work is performed. Overtime does not apply to traded shifts.

If approved, in writing and signed by the supervisor, an employee may designate an equivalent amount of vacation hours to the employee working their shift in lieu of working a shift in exchange.

Section 11. Schedule Assignments.

1. Patrol Division: 4-10 schedule with consecutive days off. Management will decide if the schedule for Support Staff assigned to the Patrol Division will be another schedule as provided in Article 4.

2. Detectives: 4-10 schedule with consecutive days off. Detectives will work Monday through Thursday. Friday, Saturday, and Sunday will be their regular days off. “”. Management will decide if the schedule for Support Staff assigned to the Investigations Division will be another schedule as provided in Article 4.

This schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association. In the event the 4-10 schedule is terminated by the County for Detectives, Detectives will revert back to the 5-9/4-9 schedule in Section 6 and double-time will be reinstated under Article 15, Section 5.

3. Corrections Deputies and Corrections Deputy Recruits: 3-12/3-12 + 8 schedule.

Section 12. DPSST Basic Academy Training.

All DPSST Basic Academy mandatory activities such as but not limited to instruction time, flag raising, and physical fitness training shall be considered as normal work duty time and shall be compensated as such. The work week shall consist of a forty (40) hour work week, based upon a five (5) day work week, eight (8) hour work day. These eight hours of the work day may be non-consecutive due to long break periods between classes and other required activities. If the amount of time spent in required activities totals more than forty hours per week, overtime will be paid at time and one half. Attendance at voluntary Basic Academy events is not considered work time.

The County agrees to continue to pay for the employee's meals and other normal required Basic Academy expenses such as room and instruction expenses. This does not include

optional equipment expenses which shall be paid by the employee, or other equipment that the employee is normally required to purchase.

Section 13. Civil Division.

Deputies and Sergeants assigned to the Civil Division shall work a 5-9/4-9 schedule as provided in Section 6.

The implementation of the 5-9/4-9 work schedule shall terminate upon the mutual consent of the parties or by thirty (30) days written notification from either party of its desire to terminate. Neither party shall file a grievance if either party decides to terminate this agreement.

Civil deputies will sign up by seniority for hours of work, shift preference and days off. Civil sergeants will have alternating Fridays or Mondays off as determined by management.

ARTICLE 5 - MEAL AND REST BREAKS

Section 1. Meal periods.

All employees will be granted a meal period during their working shift, during which time employees are subject to call when needed.

All non-sworn staff may be allowed to combine one (1) of their rest periods with their meal period with Division Commander approval.

Meal periods are on paid time.

Section 2. Rest periods.

Employees working an eight (8) or nine (9) hour day shall be provided with rest period of fifteen (15) minutes during each half of the employee's shift. Employees working a ten (10) hour day shall be provided with a rest period of twenty (20) minutes during each half of the employee's shift. Employees working a 12-hour shift shall be provided with two twenty (20) minute rest periods during the employee's shift.

Rest periods are on paid time.

ARTICLE 6 - SHIFT PREFERENCE, CHANGES AND DAYS OFF

Section 1. Seniority for Shift Preference and Days Off.

For the purposes of shift preference and selection of off duty days within a Division, seniority shall be the major consideration along with the needs of the Sheriff's Office and the individuals involved. When shift preference or selection of off duty days is not based upon seniority, the employee shall be given notice in writing at least seven (7) calendar days before the effective date of the needs of the Sheriff's Office that precluded the use of seniority for said shift preference or selection of off duty days.

Seniority shall be determined by the length of time an employee has within a job classification with the Sheriff's Office except for Recruit and Deputy Sheriff in which case seniority shall be defined as the hire date in either of these two classifications and for

Recruit Jail Deputy and Jail Deputy in which case seniority shall be defined as the hire date in either of these two classifications. For Office Specialist 1 and Office Specialist 2 seniority shall be defined as the hire date in either of these two classifications.

An employee's request for transfer to a different shift or different days off shall be made in writing and shall go directly to the Division Commander under whom the employee is assigned. The Division Commander will act promptly upon the employee's request by written response to the employee of the approval or denial of the request. No request shall be denied unless an operational basis exists for the denial. In the event the request is denied, the Division Commander shall state the reason or reasons for denial in writing in the response to the employee.

Section 2. Shift Changes.

The Division or Watch Commander will make every effort to schedule shift changes or reassignment with the least amount of additional shifts to be worked by the employee over the regular work week.

1. Shift Reassignment:

If at the request of an employee or upon a shift assignment at the discretion of management, an employee is assigned a shift, or transferred to another assignment wherein the employee is required to work any consecutive days beyond their normal work schedule to adopt the new shift assignment, such additional time worked will be compensated as either overtime pay (under Article 13, Section 1) or one (1.0) hour of straight time as pay plus 0.5 hours as straight compensatory time for each hour worked.

For example: if an employee working a four (4) ten (10) schedule works a fifth consecutive ten (10) hour day, the ten (10) hours worked will only be compensated as overtime (under Article 13, Section 1) or 10 hours of straight time and 5 hours of compensatory time. (No other hourly compensation will be paid)

2. Day Off Adjust:

Day Off Adjust is considered as regular hours that an employee is not required to work due to shift rotation or transitioning to administrative leave. Day Off Adjust is paid at the regular straight time rate of pay.

If the employee is granted a Day Off Adjust to avoid working a consecutive day beyond their previous work schedule then overtime or compensatory time do not apply for the work days that follow during the shift adjustment period. For example: If an employee working a four (4) ten (10) schedule is given a Day Off Adjust on the last day of their previous work schedule (day 4 of 4) or another following consecutive day and then starts the new schedule the employee is not entitled to any overtime or compensatory time for the days following. (i.e.: straight time only will be paid for the 5, 6, and 7th day, respectively).

If the employee requests and management agrees to take a different Day Off Adjust other than the one offered by management to avoid consecutive days worked, the employee is

not entitled to overtime or compensatory time for consecutive days worked. For example: in the above scenario if the employee is offered day 4 off but would rather have day 6 off (second day of their new schedule and work week) the employee is not entitled overtime or compensatory time for working the 5th day.

Section 3. Shift Rotation.

Shift rotation for Patrol Division, Jail Division, and Records Section occurs every six (6) months with days off sign up occurring based on classification seniority. An employee wishing to transfer to patrol from any special assignment, division or position shall notify both their Division Commander and the Patrol Division Commander, in writing, no later than June 30 or December 31 prior to the start of the shift rotation sign up.

Rotation Schedule for Employees:

Patrol/Records:

For non-sergeant employees, shift rotation and implementation occurs every six (6) months on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day. Bidding for shift rotation for non-sergeants will be completed between February 3 and February 4 and August 3 and August 4.

Patrol Sergeants' shift rotation and implementation will occur fourteen (14) days prior to the dates set for non-sergeants. Shift bidding for patrol Sergeants will occur by February 1 and August 1.

Full Time Employees assigned to a temporary duty during the Spring/Summer that begins before June 1 shall bid for a shift in February and shall remain in their regular shifts until assigned.

Jail:

For employees of the Jail Division, shift rotation and implementation occurs on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day.

Bidding for Jail Sergeants will be completed between February 1 and February 3 and August 1 and August 3. Bidding for non-sergeants will be completed between February 5 and February 10 and August 5 and August 10.

Section 4. Rotation Process.

At least ten (10) days prior to the start of the bidding for shifts, a list of personnel will be posted. The list will assign each employee a specific half (1/2) day, based upon seniority, on which each employee will make him/herself available for phone contact to select a shift and days off. The list will include a beginning and ending time for each day that calls will occur, and selections accepted.

Each employee will be called in order of seniority to select their shift and days off. If the employee does not answer the phone, return a message or answer a page within one (1)

hour, the bidding process will proceed past them. If/when the employee returns the call, the employee will select from the shifts and days off which are available at the time they called. If the employee does not return a call or during the hours posted, or provide a list of choices, their name will be placed at the top of the list at the time the employee contacts the office. The employee will be called first on the next day. If the employee does not respond, the process will be repeated for subsequent days of the sign-up period.

If the employee is not going to be available, the employee should notify their Watch Commander and the person(s) assigned to administering the calls, in writing, of their top seven (7) choices for shift and days off.

When an employee has been on paid or unpaid Administrative Leave status, due to allegations of internal violations or allegations of violations of law, for the thirty (30) calendar days prior to the start of the shift bidding day, the employee forfeits their position in the seniority based shift sign up. If the employee returns to duty status after the shift bidding period began, the employee will be assigned to a shift based on the needs of the department until the next regularly scheduled shift bidding.

Nothing in this section shall prevent the Association and/or Management from developing and applying technology to assist with improving the efficiency of the shift bidding process.

Section 5. Contract Cities.

A contract City is a City that requests services of the Sheriff's Office by contract in lieu of having their own independent law enforcement services.

1. Contract Cities Generally

Patrol Division personnel who wish to bid for assignments in contract cities shall follow the provisions of Article 6, Section 1, with the following additional requirements:

- A. All contract city assigned patrol positions shall be subject to specific written expectations for assignment to or maintaining assignment to a contract city. Those expectations shall be communicated to the employees. By mutual agreement, the city, the contract city Station Commander and/or appropriate Sheriff's Office Division Commander may reassign an employee in a contract city position if not meeting written expectations.
- B. Unexpected vacancies shall be filled by the affected Division Commander temporarily until a selection for the vacant position can be made as set out in Section 1 above.
- C. When the seniority shift bid is posted pursuant to Article 6, Section 1, the available shifts that are listed shall specify the work hours and days off. The duration of any assignment in excess of six (6) months must be indicated on the seniority shift bid posting.

D. Employees who are eligible and elect to rotate out of the contract city assignment shall notify both their Station Commander and the Patrol Commander in writing consistent with Section 3.

2. City of Wilsonville and City of Happy Valley

All Wilsonville and Happy Valley Patrol Division positions shall be for a five (5) year length of time except for Traffic Units and School Resource Officers assigned to cities, which will be governed by the time frame established in the job announcement.

Employees have the option of leaving after completion of one (1) year in the assignment.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to Wilsonville or Happy Valley.

3. Other Contract Cities

A. All full-time Patrol Division positions assigned to other contract cities (for 30 hours per week or more) shall be for a two (2) year period of time with the option of leaving after one (1) year in the assignment except for Motors Unit that will be subject to the regular semi-annual seniority shift-bid process.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to contract cities.

B. Full-time employees may not be bumped pursuant to Article 6, Section 1, prior to completion of the two (2) year commitment.

ARTICLE 7- HOLIDAYS

Section 1. Holidays.

The following days, and every day appointed by the Board of Commissioners as a holiday, shall be recognized and observed as paid holidays:

- New Year's Day (January 1st)
- Martin Luther King Jr. Birthday (Third Monday in January)
- President's Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Juneteenth (June 19th)
- Independence Day (July 4th)
- Labor Day (First Monday in September)
- Veteran's Day (November 11th)
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25th)

Section 2. Holiday Pay.

Continuous operations employees shall receive eight (8) hours pay for each of the holidays listed above on which they are not scheduled to work. If an employee is normally scheduled to work the holiday but has been granted the day off due to the holiday, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

Section 3. Weekend Holidays for non-continuous operations.

If an employee is normally scheduled to work the holiday, but has been granted the day off, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

Holidays shall be observed on any day within the same work week as the holiday if the employee has requested a day and received supervisor approval at least the work week prior to the holiday. However, if the employee has not received supervisor approval in the week preceding the holiday, the holiday shall be observed as follows: 1) On the Tuesday if the holiday was on a Monday for employees working a Tuesday through Friday schedule; or 2) on the preceding Thursday if the holiday was on a Friday for employees working a Monday through Thursday schedule.

Section 4. Holiday During Leave.

Should an employee be on authorized leave when a holiday occurs, no leave hours will be charged for that day.

Section 5: Holiday Worked.

If an employee works on any of the holidays listed above, the employee shall, in addition to their regular pay, be paid for all hours worked at the rate of time and one-half (1-1/2) their regular rate of pay. For purposes of this sub-section only, holiday pay shall be equal to the scheduled shift. For example, if the employee works on a holiday and is assigned an 8, 9, 10, or 12 hour day, they shall receive 8, 9, 10, or 12 hours of holiday pay respectively, not inclusive of overtime.

Section 6. Personal Leave.

Each employee shall receive two (2) personal leave days per calendar year. The length of each personal leave day is equal to the number of hours that employee is scheduled to work when the leave day is taken. Personal leave days cannot be used on a per hour basis. The personal leave days are non-cumulative in nature and must be used during the calendar year or they will be forfeited by the employee. Personal leave days have no value upon separation of employment.

The County cannot arbitrarily deny the use of a personal leave day. Any employee whose personal leave day(s) remains unused at the end of the calendar year because use of the day(s) was denied, the employee shall be compensated for the unused day(s) using the employee's regular rate of pay for an eight (8) hour duration. New employees shall be eligible for two (2) personal leave days after ninety (90) days of employment.

Upon ratification, each employee shall receive an additional personal leave for the 2021 calendar year, and each employee shall receive an additional personal leave for the 2022 calendar year. These additional days shall be taken pursuant to the terms above.

ARTICLE 8 - SICK LEAVE

Section 1. Accrual.

Employees shall accrue sick leave at the rate of eight (8) hours for each month worked. Sick leave shall be accrued without limit. Newly hired employees shall accrue eight (8) hours of sick leave per month starting upon hire, however they are not eligible to use leave until after working thirty (30) calendar days and accrue at least the minimum amounts required by state law. Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue sick leave for the next month on the first day of that month as per the County's 11-Day Rule policy.

Section 2. Verification of Sickness.

Absence due to sickness in excess of three (3) days may require verification by a health care provider at the request of the Division Commander. Appropriate documentation may be required for an absence of less than three (3) days if the Division Commander has reasonable suspicion (based upon a pattern of absences over a minimum of a three-month period of time) that misuse or abuse of sick leave exists.

Section 3. Use of Sick Leave.

Employees may utilize sick leave for their own illness/medical care or that of a family member, or as otherwise permitted by law. Employees may utilize sick leave when unable to perform their job duties due to health related reasons. The use of sick leave shall be equal to the workday of the respective employee.

Engaging in recreation, other employment, or other activities not related to ill health will be considered misconduct and the Sheriff may discipline employees engaging in such activities subject to the principles of Article 20, Discipline and Discharge.

Section 4. Bereavement Leave.

Exclusive of regular sick leave, an employee shall be granted not more than three (3) consecutive workdays' leave of absence with full pay in event of the death of a member of the employee's immediate family. Where deemed necessary by the Sheriff, or their designee, the employee shall be granted two (2) additional days with pay for travel time. Workday is the regular shift schedule the employee is assigned at the time of the leave.

In addition to the benefit provided in this section, employees may also use bereavement leave as provided by OFLA.

Immediate Family for Section 4: An employee's immediate family shall be defined as spouse, parents, parents of the spouse, domestic partner, parents of the domestic partner, children, stepchildren, brother, sister, grandparents (of employee, spouse or domestic partner), grandchildren, sister-in-law and brother-in-law and in loco parentis. Stepchildren, stepparents, or children of domestic partner residing with the employee, shall be included

in the definition of immediate family. In relationships other than those set forth above, under exceptional circumstances, such leave of absence may be granted by the Sheriff or their designee upon request.

Section 5. Unused Accrued Sick Leave at Time of Retirement.

Pursuant to and consistent with PERS rules and regulations, the County shall report all allowable sick leave hours to PERS upon separation from County employment.

Section 6. Sick Leave Donation.

An employee may donate accrued sick leave to another employee when the second employee (donee) does not, or will not, have adequate accrued sick leave to cover their leave as long as: (a) the donee will be on approved FMLA and/or OFLA leave when the donee's absence occurs; and/or (b) the donee will be on leave for the same FMLA/OFLA qualifying condition, even after the donee has exhausted the term of protected FMLA/OFLA leave, when the leave occurs. Sick leave hours shall be donated and used on an hour for hour basis. All donated leave is forfeited by the donor.

Section 7. Pay and Subpoenas While on Leave.

An employee is not required to perform any work while on family medical leave or sick leave absence. The Sheriff's Office will not require an employee to perform any work while on family medical leave or sick leave absence, including attendance in court. However, the parties recognize that the Sheriff's Office cannot control the issuance of a subpoena by other parties. If an employee on such leave is subpoenaed for an appearance in a case arising out of official duties, and is unable to attend, the employee shall notify the person causing the subpoena to be issued. If the employee appears pursuant to the subpoena, they shall be compensated as set forth in Article 14. If the Sheriff's Office receives a lawful subpoena compelling the employee's court attendance, the Sheriff will make an attempt to contact the employee. It shall be sufficient for the Sheriff to call the employee's listed telephone number(s), leaving a message if the employee is unavailable and there is an adult person with whom a message may be left or a device on which to leave such message. If the employee is unavailable and there is no person or device with which to leave a message, it shall be sufficient for the Sheriff to forward a copy of the subpoena to the employee by sending it to the employee's home or such other address that the employee provides for such purpose. No employee will be disciplined or counseled for failure to obey a subpoena that is served upon the employee during a County-approved family medical leave or bona fide sick leave absence.

ARTICLE 9 - VACATION LEAVE

Section 1. Accrual.

Employees having served in the County service for two (2) consecutive full calendar months, shall be credited with sixteen (16) hours vacation leave. Thereafter, vacation leave shall be accrued as follows:

- A. Less than five (5) years of continuous service, 140.4 hours per year, accrued at the rate of 11.7 hours per month. Vacation leave will not accumulate beyond 240 hours.

- B. Five (5) to ten (10) years, but less than ten (10) years of continuous service, 164.4 hours per year, accrued at the rate of 13.7 hours per month. Vacation leave will not accumulate beyond 240 hours.
- C. Ten (10) to fifteen (15) years, but less than fifteen (15) years of continuous service, 188.4 hours per year, accrued at the rate of 15.7 hours per month. Vacation leave will not accumulate beyond 320 hours.
- D. Fifteen (15) to twenty (20) years, but less than twenty (20) years of continuous service, 204.0 hours per year, accrued at the rate of 17.0 hours per month. Vacation leave will not accumulate beyond 320 hours.
- E. After twenty (20) years of continuous service, 219.6 hours per year, accrued at the rate of 18.3 hours per month. Vacation leave will not accumulate beyond 360 hours.

Effective January 1 of each calendar year, accruals exceeding the maximum shall be reduced to the maximum. See also Article 11.13. Vacation time shall be allowed to accumulate beyond the aforementioned maximum where the employee has requested vacation and such vacation request has been denied. Any vacation leave that would otherwise have been lost shall be taken as soon thereafter as the needs of the County and the availability of vacation relief allow.

Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue vacation leave for the next month on the first day of that month.

Section 2. Termination or Death.

After six (6) months of service, upon the termination of an employee for any reason, or in the event of the death of an employee, all accumulated vacation shall be paid either to the employee or their heirs, whichever the case may be.

Section 3. Vacation Scheduling.

Employees shall be permitted to choose either a split (including less than a full day of vacation) or entire vacation. Whenever possible, if consistent with the needs of the County in conjunction with the availability of vacation relief, employees shall have the right to determine vacation time.

The County shall make available a vacation sign-up sheet twice each year;

1. For vacations occurring from the first full payroll period in March through the first payroll period following Labor Day (“Spring Bump”):
 - a. Non-Jail Staff: February 5 to February 10.
 - b. Jail Staff: February 11 to February 20.
2. For vacations occurring after the payroll period following Labor Day through the Friday before the March shift bid begins (“Fall Bump”)
 - a. Non-Jail Staff: August 5 to August 10.

b. Jail Staff: August 11 to August 20.

Any conflicts in requested vacation time shall be resolved by granting the requested time off to the employee with the most seniority.

The vacation schedule shall be frozen on:

- a. Non-Jail Staff: February 15 and August 15
- b. Jail Staff: February 21 and August 21.

Employees are not required to sign up to use vacation time during these two sign-up periods. An employee may request vacation at any time throughout the year provided, however, that for vacation scheduled other than during the February and August sign-up periods, seniority may be used to resolve conflicts only for vacations of less than one work week provided the employee exercises their seniority rights at least thirty (30) calendar days before the effective date of the vacation request.

The County must accept or reject an employee's request for vacation within seventy-two (72) hours of receipt of the request. The seventy-two (72) hour response time limit does not apply during the vacation sign up periods described above.

Section 4. Required Use of Vacation.

The Sheriff may require each employee to take a maximum of ten (10) days' vacation within the employee's anniversary year.

Section 5. Commitment to Retire.

1. For employees hired before June 7, 2018, an employee who provides written or email notice to the Sheriff, or their designee, and the Agency Finance Section of their commitment to retire within three years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed three (3) times the maximum accrual of vacation and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay, 457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of their retirement not more than three years into the future. If an employee does not retire on the date specified in their commitment to retire notice, they shall lose any accrued vacation in excess of the carry over limit set at 1080 hours.
2. For employees hired after June 7, 2018, an employee who provides written or email notice to the Sheriff or their designee and the Agency Finance Section of their commitment to retire within three (3) years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed seven hundred and twenty (720) hours and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay,

457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of their retirement not more than three (3) years into the future. If an employee does not retire on the date specified in their commitment to retire notice, excess vacation over the employee's vacation cap under Article 9.1 will be paid to the employee, and the employee is precluded from applying for Section 5 benefits again. The Sheriff may consider exceptional circumstances for reapplying for Section 5 benefits.

ARTICLE 10 - OTHER LEAVES

Section 1. Leave of Absence.

Leaves of absence for medical purposes is covered by County Code and policy.

Leaves of absence without pay for a limited period, not to exceed ninety (90) days, shall be granted by the Sheriff at their discretion for any reasonable purpose. Such leave may be renewed or extended by the Board of County Commissioners. Reasonable purpose will not include engaging in other employment. The Sheriff may make exceptions for those whose purpose is to engage in temporary employment that is clearly in the best interest of the Sheriff's Office.

Section 2. Jury Duty.

Employees shall be granted leave with full pay any time they are required to report for jury duty or jury service, in lieu of jury fees, excluding mileage reimbursement upon any day that they are scheduled to work. Employees will be required to call their Watch Commander when less than a normal work day is required by jury duty. The Watch Commander shall determine if the employee shall be required to report to work and shall take into consideration the travel time of the employee.

Section 3. Family Medical Leave and Parental Leave.

Family medical leave and parental leave will be granted in accordance with all Federal and State statutes and Clackamas County policy.

Section 4. Educational Leave.

After completing one (1) year of service, an employee upon request may be granted a leave of absence without pay for educational purposes at an accredited school when it is related to their employment. The period of such leave of absence shall not exceed one (1) year, but it may be renewed or extended at the request of the employee, when necessary.

One (1) year leave of absence with any requested extension, for educational purposes, may not be provided more than once in any three (3) year period.

Employees may also be granted leaves of absence with or without pay for educational purposes, for additional lengths of time, to attend conferences, seminars, briefing sessions, or other functions of a similar nature that are intended to improve or upgrade the individual's skill or professional ability, provided it meets with the approval of the Sheriff.

ARTICLE 11 - HEALTH AND WELFARE

Section 1. Accrual of Benefits.

A regular status employee working greater than or equal to 20 hours per week is eligible for medical benefits on the first of the month following the benefit waiting period described in Section 10.

Section 2. Medical-Hospital.

The County agrees to contribute toward the monthly composite premium at the existing dollar level for coverage defined in the Summary Plan Descriptions agreed to by the Association and the County. Family coverage shall include dependent college students up to the age of twenty-six (26) and dependent coverage required under Federal or State statutes. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

For the plan years effective January 2, 2021, January 1, 2022 and January 1, 2023, the County agrees to pay 95% of the composite premium rate for Providence medical plans and the employee agrees to pay 5% of the premium costs. However, if the premium increases more than 10% in any one year, the County and the employee shall evenly split the increased costs above 10%. The joint committee identified in Section 12 shall be utilized as a method to control increased premium costs.

The County agrees to pay 100% of the premium for employees enrolled in the Kaiser medical plan.

If the parties, while bargaining for a successor collective bargaining agreement, have not reached agreement regarding this Article 11, by September 30, 2023, the County will conduct an open enrollment process for health care coverage to be effective January 1, 2024, with the County agreeing to pay 95% of the total composite rate premium costs for the Providence Plans and 100% of the cost for the Kaiser medical plan. This temporary increase in the County's contribution will satisfy the County's obligation to maintain the status quo for the medical plans while bargaining continues.

Insurance Opt-Out: Employees who provide proof of other medical coverage and who opt out of coverage provided by the County will receive cash back on a monthly basis as provided by the yearly Benefits Summary, paid to the employee's HRA/VEBA. Employees may only rejoin County coverage with a qualifying condition subject to carrier rules.

Section 3. Life Insurance.

The County agrees to contribute monthly an amount equal to the life insurance premium with a death benefit of \$75,000. Employees in a classified position, regularly scheduled for thirty (30) or more hours of work per week, will become eligible on the first day of the month following the benefit waiting period described in Section 10. The Life Insurance program will provide an Accelerated Benefits option provision. The cost for the Accelerated Benefits Option will be paid by the County.

Section 4. Dental Insurance.

The County agrees to contribute monthly an amount equal to the self-funded composite dental program rate for the existing family coverage with an individual benefit of \$1,500 per individual per year, including an orthodontic benefit for dependent children up to \$3,000. The employee may also choose alternative dental plans as provided by the County, including a plan provided through Kaiser. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

Section 5. Long-term Disability Insurance.

The County agrees to contribute monthly an amount equal to the long-term disability insurance premium for non-occupational accident or illness. Benefits, including those from other sources, will equal sixty percent (60%) of up to \$3,333 in monthly salary after an elimination period of the first 30 days of each period of total disability or the exhaustion of accumulated sick leave, whichever occurs later. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

The County agrees to make available a supplemental disability insurance plan up to a maximum benefit of 60% of a \$10,000 monthly salary subject to plan eligibility. Contributions are only paid by the employee.

Section 6. Civil Insurance.

The present policy of providing insurance for all employees against civil suits covering insurable acts while in the performance of their duties will be continued.

Section 7. Surviving Spouse and Dependent Coverage.

The County agrees to provide spouses and dependents of deceased employees who were covered by this Agreement with medical and dental insurance as provided for in Sections 1 and 3 of this Article, for a period of twenty-four (24) months following the death of the employee. If, during the twenty-four (24) month period, the deceased employee's spouse becomes eligible for medical or dental insurance under another plan, the County provided insurance will cease on the inception date of the new insurance.

Section 8. Retiree Medical Benefits.

Three and one-half percent(3.5%) of an employee's base pay as set forth in the pay plan shall be placed into a fund to be administered by the Clackamas County Sheriff's Office Independent Retiree Medical Trust, "IRMT," (subject to the agreement below) to provide medical benefits for retired eligible employees who have not yet become eligible for Medicare benefits. The Retiree Medical Trust shall have the sole responsibility and the right for determining the amounts of benefits to be received and the eligibility for receipt of those benefits, subject to the agreement below. The benefit listed above shall apply to employees working during the "rehire period" under the Retired Rehire section of Article 28.

The purpose of the IRMT is to administer the retiree medical benefits which are described in Article 11, Section 8 of the collective bargaining agreement and in the Agreement dated February 25, 2005 related to the Sheriff's Office Retiree Medical Fund.

- A. The County will continue to contribute funds at the rate set forth in Article 11(8) of the Agreement into an account designated by the Clackamas County Sheriff's Office Independent Retiree Medical Trust (IRMT). The County's obligation to contribute funds to the IRMT shall cease only upon written agreement by the County and the CCPOA.
- B. The County does not guarantee any particular level of retiree medical benefits to any individual or group of employees; and in the event that the IRMT reduces medical benefit levels, the County is not obligated to maintain retiree medical benefit levels or make up any difference in the level of retiree medical benefits.

Section 9. Domestic Partners.

Domestic partners, as described within this section, will be treated the same as spouses for purposes of medical, dental and life insurance programs described in this Article, subject to Federal and State laws and regulations and completion of a notarized Affidavit of Domestic Partnership provided and approved by the Department of Human Resources. For the purposes of this section, Domestic partners include same and opposite sex couples.

Section 10. Benefits Waiting Period.

Benefits shall become effective on the first day of the calendar month following the employee's date of hire.

Section 11. Plan Changes Required by Law or Insurance Carrier.

The County shall act to update any mandated coverage or changes caused by Federal or State laws, rules and regulations or required by the insurance carriers. Unilateral changes in benefits initiated solely by the insurance carriers are subject only to impact negotiations with the Association pursuant to ORS 243.698.

Section 12. Joint Peace Officers/County Benefits Committee.

Effective upon ratification of this agreement and in the open enrollment period following the ratification of this agreement, all Association employees shall participate in the benefit plan as agreed through negotiations between the Association and the County.

- A. The Joint Peace Officers/County Benefits Committee shall have the responsibility to make recommendations regarding the level, scope, and design of benefit plans offered to employees for medical and vision coverage, dental coverage and for disability and life insurance. The primary emphasis in plan design shall be to provide a comprehensive, competitive benefit program at a reasonable cost. The Committee will investigate all options for providing insurance including forming an employee's benefit trust and/or partial self-funding.
- B. The Committee shall be comprised of an equal number of members from the Association and County. A non-voting County Commissioner will be invited to attend all meetings. The Committee shall meet at least quarterly, or more frequently if required. Decisions of the Committee will be made by a majority of votes. Absentee members will also be given the opportunity to vote.

- C. The Committee shall make plan design recommendations for medical, vision, dental, disability and life insurance plans at least one hundred and twenty (120) days prior to the beginning of the following plan year. Any changes to plan designs must be through negotiations between the Association and the County.
- D. The County shall provide administrative coordination and support for the Committee. The Committee shall be provided all financial information and related reports as may be available.
- E. The Committee shall consider various options available to control increased premium costs.
- F. No changes will be made to benefit plans without the approval of the Association and County.

Section 13. Health Reimbursement Account (HRA).

The County shall provide each employee covered by this agreement the opportunity to enroll in a Health Reimbursement Account (HRA).

The County shall pay the account fee up to \$1.50 per account per month for each active employee enrolled in a HRA/VEBA. The participating employee shall be responsible for the third party annualized investment fee.

Participating employees who have used at least forty (40) hours of vacation in the prior calendar year shall have all vacation time up to eighty (80) hours in excess of the annual cap, as referenced in Article 9(1), paid into their HRA/VEBA account.

Section 14: Flexible Spending Account (FSA).

Employees may participate in the Flexible Savings Account offered by the County at the employee's expense for contributions. Employer will pay the administrative fee.

ARTICLE 12 – WAGES

Section 1. Wages and Classification Schedule.

In lieu of a retroactive pay adjustment, current employees will receive a one-time payment after execution by both parties. The payment will be based on 2.6% of an employee's gross pay earnings (base pay, overtime, longevity and incentives) from the beginning of the pay period closest to July 1, 2020 to the ratification date. Any new incentives or add-to-pays to this agreement are not included in this payment.

Effective July 1, 2021, the pay plan for all classifications within the bargaining unit will be increased by 1.8%.

Effective July 1, 2022, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%.

The COLA percentage will be sent to the Association President by April 1 of each year. An updated pay plan will be published by the County each year by July 1 on the Department of Human Resources website.

“”” Section 2. Deferred Compensation.

An amount equivalent to four percent (4%) of the employee’s base pay as set forth in the pay plan shall be placed into a deferred compensation plan for each employee, the plan to be administered by a provider with whom Clackamas County has contracted for deferred compensation services.

Section 3. Time of Service.

Step increases (merit raises), and longevity pay for regular full-time employees, shall be determined on the basis of calendar months within which the employee has worked without interruption in service. “Interruption in service” shall not include those authorized leaves as set forth in this Agreement.

Section 4. Longevity Pay.

For every five (5) years (60 months) of continuous County service, the employee shall receive \$69.07 per month longevity pay in addition to their normal compensation. Eligibility shall be based upon the number of continuous years of regular status County Service. Continuous service for the purpose of determining eligibility for longevity pay shall be service unbroken by separation from County employment that results in a changed date of hire. Upon ratification by both parties, the amounts shall increase by the amount of wage increase determined in Section 1 above. On July 1, 2021 and July 1, 2022, the amounts shall increase by the amount of wage increase determined in Section 1 above.

Section 5. Computation of Hourly Rate. Salary scale has hourly rate.

The base hourly rate is specifically identified for each classification in the pay plan. The pay plan also shows a 2080 base annual salary formulated on the base hourly rate of pay.

Section 6. Records Unit Graveyard Shift Differential Pay.

Employees in the Records Unit of the Support Services Division who work 51% of their scheduled work hours after 12:00 midnight shall receive a shift differential of \$1.00 per hour for all hours worked during their shift. If an employee is requested or required to continue working at the end of their regular shift and has been receiving shift differential based on their graveyard shift, the employee will continue to receive the shift differential. (Example: Employee is on graveyard and is mandated to work into the day shift). Employees working voluntary overtime or mandated from swing shift into graveyard are not eligible for graveyard shift.

ARTICLE 13 – OVERTIME

Section 1. Overtime.

Time and one-half (1.5) the employee’s regular hourly rate of pay shall be paid for work under any of the following conditions, but compensation shall not be paid twice for the same hours:

- A. All authorized work performed in any work day in excess of:

1. eight (8) hours for employees on a 5-8 work schedule, or
 2. nine (9) hours in a nine (9) hour work day or eight (8) hours for an eight (8) hour work day for employees on a 9-80 schedule; or
 3. nine (9) hours for employees on a 5-9/4-9 work schedule, or
 4. ten (10) hours for employees on a 4-10 work schedule, or
 5. twelve (12) hours in a twelve (12) hour work day, or eight (8) hours in an eight (8) hour work day, for employees on a 3-12/3-12 + 8 hour work schedule;
- B. All authorized work performed in excess of:
- forty (40) hours in any work week for employees on a 5-8, 9-80 or 4-10 work schedule, or
 - eighty-one (81) hours in the regular 14-day work period for employees on a 5-9/4-9 work schedule, or
 - eighty (80) hours in the regular 14-day work period for employees on a 3-12/3-12 + 8 work schedule;
- C. All authorized work performed on a scheduled day off. In the event an employee is required to work on a day off, the employee will be paid a minimum of four (4) hours at time and one-half.
- D. Employees working five consecutive days with eight hour shifts shall be paid time and one-half (1.5) for all work performed on the sixth (6th) and seventh (7th) day of their regular workweek. Employees working four consecutive days with ten hour shifts shall be paid time and one-half (1.5) for all work performed on the fifth (5th), sixth (6th) and seventh (7th) days of their regular work week. Employees working the 3-12/3-12 + 8 schedule shall be paid time and one-half (1.5) for all work performed: in their “short” week, on the days following their three regular work days; and in their “long” week, on the days following their four regular work days.
- E. On the day that daylight savings begins (“Spring Forward”) if an employee would be short one hour of work on their work shift, the employee shall either work an hour earlier than the start of their shift, an hour later at the end of their shift, or use a hour of accrued vacation or compensatory time in order to be paid for the entire shift. The employee shall notify their supervisor in the preceding payroll period of their preference. On the day that daylight savings ends (“Fall Back”) the employee will be compensated at the rate of time and one half (1.5) for any hours worked beyond their respective normal shift. The additional shift will be considered mandatory overtime.

Any paid leave used shall be considered hours worked for purposes of calculating overtime. Overtime will only be paid for actual hours worked.

For full time employees, hours worked that are an extension of a previously worked shift shall be paid at overtime at time and one half (1.5) for actual hours worked, except as maybe limited by Article 13(2).

For regular part-time employees, overtime is paid pursuant to Article 26.

Section 2. Assignment of Overtime Patrol Division Continuous Operations & CSO

When there are vacancies created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

- A. Electronic communication is the preferred method of staffing shortages on shifts in Patrol. All electronic communication will occur between the hours of 0700 and 2100, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in 72 hours prior to the start of the vacancy. Once the lock in period has started (available overtime will be posted via electronic communication method for each overtime shift.

- 1. If the overtime callout is less than two (2) hours away or the shift has begun – the employees will have fifteen (15) minutes to call in.
- 2. If the overtime callout is more than two (2) hours away, but less than four (4) hours away - the employee will have one (1) hour to call in.
- 3. If the overtime callout is more than four (4) hours away, but less than 24 hours away - the employee will have two (2) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

- B. Employees will have the following time to call in if the overtime callout is 24 hours or more away:
 - a. 1st shift overtime will be locked at 5 PM before start of shift.
 - b. 2nd shift overtime will be locked at 9 PM before start of shift.
 - c. 3rd shift overtime will be locked at 9 PM before start of shift.
 - d. 4th shift overtime will be locked at 12 PM before start of shift.
 - e. If the vacancy is not filled by the deadline outlined in a-d of this subsection, notice of the available shift may be re-posted via electronic communication method and the vacancy will be filled on a first come-first served basis.
- C. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.

- D. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift it will be offered via electronic communication as described in Article 13(2)(A). If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication to employees in classifications other than the classification where the vacancy exists.
- E. When more than two hours' notice has been received of a vacancy that has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours before the start of the shift, regardless of seniority.
- F. Available overtime shifts may be split among multiple employees. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift. An employee who fails to report for a scheduled shift will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8 or an emergency situation, and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime signup privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.
- G. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training, the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted, with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours before the start of the shift, regardless of seniority.

- H. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division and third from a different classification, except as provided for in Article 13(2)(F).

Section 3. Assignment of Overtime Corrections Division

When vacancies created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

- A. Electronic communication is the preferred method of staffing shortages on shifts in the Corrections Divisions. All electronic communication will occur 24 hours per day, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in 120 hours prior to the start of the vacancy. Once the lock in period has started, available overtime will be posted via electronic communication method for each overtime shift.

1. If the overtime callout is less than five (5) hours away or the shift has begun – the employees will have thirty (30) minutes to call in.
2. If the overtime callout is more than five (5) hours away, the employee will have four (4) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

- B. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.
- C. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift, it will be offered via electronic communication as described in Article 13(3)(A). If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication to employees in classifications other than the classification where the vacancy exists.
- D. When more than two hours' notice has been received of a vacancy that the County has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than one hundred twenty (120) hours before the start of the shift, regardless of seniority.

- E. Available overtime shifts may be split among multiple employees. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must also contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift. An employee who fails to report for a scheduled shift will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8, or in an emergency situation and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime sign-up privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.

- F. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than one hundred and twenty (120) hours before the start of the shift, regardless of seniority.

- G. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division, and third from a different classification, except as provided for in Article 13(3)(F).

Section 4. Assignment of Overtime Other Divisions and Sections

When vacancies are created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

Overtime will be posted in a manner in which sign up is available to all employees who are eligible to perform the work. Overtime sign-up will be locked in seventy two (72) hours prior to start of the shift. Seniority will be by classification in division.

Section 5. Additional Overtime Rules

- A. A temporary employee, hired on a 90-day basis, will only be used to replace personnel who are scheduled to be absent for more than twenty (20) working days for employees working a 5/8 work schedule or 16 working days for employees working a 4/10 work schedule.

- B. The County and the Association recognize it is not in the best interest of the County to have employees be required to work overtime. The County will continue its policy of reducing or eliminating the use of mandatory overtime.

Section 6. DPSST Basic Academy Overtime.

Employees enrolled in the DPSST Basic Academy will be paid at time and one-half (1.5) their regular hourly rate of pay for required activities, as described in Article 4, Section 12, exceeding 40 hours in any work week. This Section shall apply in lieu of Section 1 of this Article.

ARTICLE 14 - COURT APPEARANCES

Section 1. Time Outside Regular Shift for Court Appearances.

A court appearance is all authorized time spent by an employee other than on their regular work day in criminal or civil proceedings, where their attendance is required, arising out of the performance of the employee's official duties.

If the court case is listed on the trial line the night before the scheduled appearance date and the employee is notified of the cancellation on the day of the appearance, the employee will receive the applicable minimum court time.

Regular Work Day:

1) Employees attending a court appearance that is more than 30 minutes before the start of their scheduled work day will receive a minimum of two (2) hours at time and one-half (1.5) if on a regular workday: except that employees assigned to graveyard and fourth shift patrol shall receive three (3) hours for mandatory court appearances on a regular work day instead of two (2) hours. Graveyard shift is defined as half or more of the shift is worked after midnight and fourth shift patrol is from 1700 to 0300.

2) Employees attending a court appearance within 30 minutes of their scheduled work day will receive 30 minutes of time and one-half (1.5) rate for the time worked before the start of the shift.

Regular Scheduled day off:

If an employee attends court on a regularly scheduled day off, the employee will receive a minimum of four (4) hours at the time and one-half (1.5) rate.

Multiple Court Appearances on the same day:

In the event an employee attends more than one court appearance where the start time of the second appearance falls within either four hours (day off), three hours (graveyard work day), or two hours (work day) of the start time of the first appearance, minimum compensation as set out above shall not be earned for the first appearance, unless the member was released from the subpoena and had no prior notification of the subsequent

court appearance, and minimum compensation as set out above shall apply to the latter appearance, and minimum compensation as set out above shall be earned for no more time than from the start time of the first appearance up to the start of this second appearance.

For example, if an employee receives prior notification of two subpoenas on a day off, where the appearance times are 1100 and 1300, the employee shall earn four hours of court appearance pay for the second court appearance and two hours for the first court appearance, so long as there is an off duty break of more than fifteen (15) minutes between the two court appearances. In the event there is no break between court appearances, continuous compensation would accrue at a minimum of no less than four hours.

Section 2. Overtime Pay While On Approved Paid Leave.

Overtime pay while on approved paid leave will be awarded as follows:

- A. If the employee had an approved paid leave day scheduled before receiving a court subpoena, it will be handled as a day off under Article 14, unless the employee elects to be credited the approved paid leave time actually spent in court.
- B. If the employee requests a paid leave day for a day that they already had a subpoena, it will be handled as a work day under Article 14. If court time would be during their normal duty time, the employee will have their paid leave hours adjusted hour for hour so that no leave time will be lost.

ARTICLE 15 - CALL BACK/CALL OUTS

Section 1. Call Back.

“Call Back” is defined as an employee being contacted outside their regular work hours on a regularly scheduled work day and being called back to work.

Call back time, when authorized, will be paid as overtime. Minimum compensation for a call back will be the equivalent of two (2) hours.

A regularly scheduled work day is considered the calendar day on which the shift begins.

Section 2. Call Out.

“Call Out” is defined as an employee being contacted on a scheduled day off and being called out to work.

Call out time, when authorized, will be paid as overtime. Minimum compensation for a call out will be the equivalent of four (4) hours

Section 3. Conditions for Call Outs and Call Backs.

In the event an employee is called back or out to work within 30 minutes of either the beginning or end of a regularly scheduled shift, the employee will receive 30 minutes of overtime pay.

In the event an employee's shift is extended, the employee will receive overtime for the hours worked consistent with Article 13.

A de minimis contact, such as an isolated phone call by management to an employee, lasting around 5 minutes or less is not compensable.

Employees who voluntarily sign up for a scheduled overtime assignment are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled overtime assignment.

Employees who voluntarily sign up for scheduled events are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled event.

Employees who elect training on a day off are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the training.

Section 4. Electronic Notification Devices.

Both the County and the Association recognize that notification of an emergency call out is greatly enhanced with the use of electronic devices and helps to facilitate expedient responses. Additionally, it is acknowledged that the carrying of County issued electronic devices during off duty time is voluntary, unless otherwise required under Article 17.

Section 5. Call Outs for Detective, ITF and Craft.

A. Detectives:

A Call Out is defined as an employee being contacted on their regularly scheduled days off and being called back to duty for an unplanned event. A Detective assigned to day shift who receives a Call Out after the end of their last shift of a work week and before the beginning of their next regular shift would receive Call Out pay. Any Call Out within four hours of the start of their regular shift will be paid actual overtime worked up to the start of the employee's regular shift.

If the County changes Detectives' schedules back to 5-9/4-9s from 4-10s, double time for Detectives will be reinstated as set forth below and under Article 4, Section 11.

B. ITF, CRAFT, CFU and CSI:

Call Out pay will be authorized at double time for employee's regular assigned days off. The double time pay rate applies whenever an employee is notified of the requirement to return to work during their off-duty weekend hours. The double time pay rate continues to apply for all work performed during the call out if it occurs during the employee's weekend hours. The initial response to the Call Out and subsequent follow-up investigations during the employee's weekend hours are considered "unplanned" events.

If an employee is notified during their normal work hours that they will be needed for work during their upcoming weekend off-duty hours, this would be considered a 'planned event' and the employee is entitled to be paid the overtime pay rate as contained in Article 13. When their work on the planned event is complete, the employee will return to off-duty status and subsequent Call Outs would be considered unplanned and the employee would be paid at the double time pay rate.

Minimum Call Out shall be for four (4) hours except when called out within four (4) hours of the start of their regular shift in which case the double-time will be paid up to the start of the employee's regular shift.

Call Out is defined as an employee being contacted outside their regular work schedule and being called back to duty for an unplanned event. Example: ITF or CRAFT is assigned to day shift, Monday through Thursday, receives an assignment after the end of their shift on Thursday and before the beginning of their regular shift on Monday would receive Call Out pay at the double time rate.

If employees assigned to ITF or CRAFT become subject to On Call Pay under Article 17, Section 2, those employees will no longer receive double-time for call outs under this subsection (B) and will instead be subject to Sections 2, 3 and 4 of this Article for call outs.

ARTICLE 16 - TRAVEL PAY

Whenever an employee is required to report for work in any location other than their established place of work , and transportation is not provided by the County, they shall be paid for the use of their personal transportation at the rate established by the Internal Revenue Service for reimbursement for business use of personal vehicle. The employee will not be reimbursed for use of their personal vehicle if the place they are required to report is within Clackamas County, or it is outside of the county but closer to their residence than the location where they would report to obtain a county vehicle.

Whenever an employee is required to appear for work at any location other than their established place of work, the employee will not be compensated for drive time to and from the location if the location they are required to report is closer to their residence than their established place of work. If the location the employee is required to report is further from their residence than their established place of work, they will be compensated for the actual drive time to and from the location, less the usual amount of time it takes them to report to their established place of work.

Established place of work shall be defined as any office, reporting station, or precinct maintained by or for the County in which employees are assigned to work either permanently, or on a temporary basis of 90 days or more.

Whenever the County opens a new office, reporting station, or precinct, or changes the location of an existing office, reporting station, or precinct, those employees who are affected by the move may exercise a seniority bump as provided in Article 6 of this contract.

’ ’ ’ ’ For travel requiring per diem, the rates set and maintained by the US General Services Administration (www.GSA.gov) based on the travel destination shall be used. Per diem will be provided to the employee before their departure date, so long as the County has fourteen (14) days’ notice before the departure date. Per diem will be provided to the employee after their return from travel if the County does not receive fourteen (14) days’ notice before the departure date.

ARTICLE 17 - ON CALL PAY

Section 1. On Call Assignment.

Employees may be assigned by management to be “on-call.” The assignment requires an employee be readily available to report to work and respond to the needed work location within 60 minutes of notice. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. Assignment of on-call is at the discretion of the County and assignments will be in writing. On-call status is not payment for hours worked and is not considered compensable time.

For each hour assigned to on-call status, employees will earn the equivalent 1/8th straight time, applied to the compensatory time bank. Employees are encouraged to use the time off during the calendar year.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

Section 2. Detectives.

Detectives may be assigned to on-call status to be available to work when off duty. The number of Detectives assigned to on-call is at the discretion of the County.

The County will provide for a bid in six month increments for on call assignments subject to operational need. Detectives will select coverage periods in an equitable fashion by classification seniority. Unfilled coverage periods will be assigned in order of inverse classification seniority.

The County is not precluded from posting shorter periods of on-call assignment for particular operational needs, which will be filled first voluntarily and if still unfilled will be assigned by inverse classification seniority.

Employees are permitted to trade on-call periods with supervisory approval.

Detectives assigned to on-call will earn the equivalent 1/8th straight time applied to a Detective Leave Bank (DLB) to be used for later time off. Hours earned will be reported with regular pay periods. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on “On-call” status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee retains the ownership of accrued time

up to 120 hours and may request the use of time off following existing practices within the employee's new classification. Upon separation of employment, the Detective Leave Bank has no compensable value.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

Employees assigned to ITF or CRAFT may receive on-call pay under this Section 2 if assigned by the County to on-call status. In such case, double time will cease for call outs for those employees as set forth in Article 15, Section 4(B).

Section 3. Detective Sergeants.

Effective on the 1st day of the month after ratification, as compensation for being "on-call," Detectives Sergeants will earn the equivalent of four (4) hours of straight time per month applied to a Detective Leave Bank (DLB) to be used for later time off. The hours reported will be upon the first day of the month. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on "On-Call" status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee does not retain ownership of accrued time. Upon separation of employment, the DLB has no compensable value.

This section shall not apply to CCITF Sergeants.

ARTICLE 18 - WORK ABOVE NORMAL CLASSIFICATION

Section 1. Working Out of Classification.

Whenever an employee is assigned to perform any work for one-half or more of a shift in a classification above that in which the employee is normally classified, the employee shall be paid for such work hours at the first step in the range assigned to the higher classification or a five percent (5%) increase of base hourly rate, whichever is higher, unless said employee is being trained for a higher classification in accordance with an approved training and development plan.

Section 2. Special Assignments.

- A. CCITF: A Deputy temporarily assigned and working the Clackamas County Interagency Task Force (CCITF) will be eligible to be paid five percent (5%) above their base hourly rate after successful completion of a training period for one hundred and eighty days (180) after the employee starts working in the assignment. At the end of the training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor will recommend one of the following: (1) granting of the pay increase prospectively, (2) withholding the pay increase and re-evaluating at 365 days, or (3) removal of the individual from the assignment. If a member is re-evaluated at 365 days, the Unit supervisor shall recommend that the pay increase be granted prospectively or recommend removal from the assignment. The Unit supervisor's recommendations will be forwarded to the Division Commander for review and approval. In consideration for the additional compensation set forth above, the Sheriff shall have

authority to end an assignment to the CCITF as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

- B. Rotational Detective. Upon beginning work in the assignment the Deputy will be paid five percent (5%) above their base-hourly rate. After the conclusion of a 180-day training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor's evaluation will be forwarded to the Division Commander for review and approval. The Sheriff shall have authority to end an assignment of a Rotational Detective as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

A Deputy working as a Rotational Detective will be eligible for the following additional benefits: (1) Compensated at the hourly rate of 1.5 for authorized overtime work, (2) Detective clothing allowance as outlined within this agreement in place of the uniform cleaning allowance, (3) Sign up for "on-call" coverage upon completion of the 180 day training period, based on Division seniority, and (4) Accrual of earned time off in the "Detective Leave Bank" (DLB), which will be capped at 120 hours in accordance with Article 17. When the Deputy rotates out of Detectives, the Deputy retains no ownership of the accrued DLB time. The hours in the DLB have zero cash value.

ARTICLE 19 - TRAINING/PROBATIONARY PERIODS

Section 1. Training.

Sworn employees shall be provided sufficient training to maintain DPPST certification. The employee shall participate in training, including firearms training, at times set by the Sheriff or their designee. Employees required to participate in any training that exceeds the total number of hours in their regularly scheduled work week shall be compensated at the overtime rate for time spent in training, including commuting when required by the Fair Labor Standards Act or to flex their hours with approval of their supervisor. Employees who elect training on a day off when otherwise available during a regular work day will receive overtime for time spent in training, with no 4-hour minimum.

Section 2. Probationary Periods.

New Recruits (DPSST certified classifications): Employees hired as Deputy Sheriff Recruit or Jail Deputy Recruit will serve a total of 18 months (545 days) in an initial probationary status, including 365 days as a Recruit and 180 days after promotion to Deputy after successful completion of the recruit program regardless of whether they are new hires or transfer from other County employment. This probationary period is for the purpose of DPSST certification and post-training evaluation. A Recruit will not be promoted to Probationary Deputy status unless the employee has received DPSST certification and successfully completed the FTEP program. At the discretion of the Sheriff, this probationary period may be extended for the purposes of DPSST certification and successful completion of FTEP.

New employees (non-DPSST certified classifications): Employees hired into non- DPSST certified positions serve a 365 day probationary period, regardless of whether they are new

hires or transfer from other County employment. For positions requiring an FTEP program, the probationary period may be extended to account for the FTEP program.

Lateral Hire: Employees hired for a DPSST certified position who comes from another law enforcement agency are considered a lateral hire. A DPSST certified employee hired as a lateral will serve an initial probationary period of 365 days.

During any initial probationary period, an employee does not have just cause or grievance rights for discipline or discharge.

A probationary period may be extended in circumstances where training has not been completed or in circumstances of medical leave or other lawful leave (for example: workers' compensation).

Promotions: An employee serving a probationary period as a result of appointment from a promotion list shall serve a probation of 180 days. A DPSST certified employee who fails to qualify in the new position during the probationary period shall be reinstated to their former position. This provision does not provide for reinstatement to a Recruit position. A non DPSST certified employee who fails to qualify during the probationary period in the new position shall be reinstated to their former position if the position is open.

ARTICLE 20 - DISCIPLINE AND DISCHARGE

Section 1.

Disciplinary action may be imposed upon an employee only for just cause, using the principles of progressive discipline. Disciplinary action may take any of the following forms: written reprimand, temporary pay reduction, suspension, demotion, or dismissal.

Temporary pay reductions shall be limited to no more than six pay periods and a two-step reduction.

Counseling: Counseling is not discipline and may not be protested through the grievance process, except where the Association challenges whether the counseling is disciplinary.. Counseling is a less formal means of resolving issues related to daily operations, interpersonal conflicts, and minor matters of improper conduct. Counseling documents are not placed in an employee's personnel file, however, they may be maintained in the Watch Commander's file and may be mentioned in the next yearly evaluation. Employees may provide a written rebuttal to the counseling within ten (10) calendar days of the employee's receipt of the written counseling memorandum. Upon request, an employee may review and request copies of counseling documents in the employee's Watch Commander's file. After the later of twelve (12) months or the employee's next annual performance evaluation, the counseling will be considered stale if no further counseling or discipline has been imposed for similarly related conduct. Nothing herein prevents or prohibits command staff from discussing operational matters informally with employees.

Section 2.

In the event an employee is under investigation concerning a matter that they reasonably believe may lead to discipline, the following procedural due process shall be followed:

a. Notice of Investigation:

Prior to an administrative investigatory interview, the County will provide the employee and Association with at least 24-hours' notice of an investigatory interview and will describe the nature of the charges or allegations that may result in discipline. If the accuser or witness is an employee, or the accuser's identity is otherwise protected by law, their information may be redacted if necessary to comply with statutes prohibiting the County from disclosing their identity, unless the accuser or witness expressly waives their confidentiality in writing. The 24-hour notice of interview may be less if such notice would jeopardize the successful completion of the investigation through possible loss of material evidence.

The notice of investigatory interview will also include:

- 1) The right to have an Association Representative present,
- 2) The name of the assigned investigator, and
- 3) The date, time and location of the interview.

b. Investigatory Interviews:

Employees subject to an investigative interview will be provided the following:

- 1) The employee may have an Association representative present during the interview so long as the interview is not unduly delayed.
- 2) No more than two interviewers at a time may question the employee.
- 3) The County will record the investigatory interview. A copy of the audio/video recording will be provided to the employee and Association upon request. The employee or Association is not precluded from audio recording; however, notice of recording must be provided in advance and a copy provided to the County upon request.
- 4) In a compelled interview solely for noncriminal purposes, an employee who refuses to respond to questions or to be interviewed shall be informed that refusal may lead to discipline up to and including termination. But for threat of disciplinary action for refusing to answer questions as compelled, the employee being interviewed may not be threatened with punitive action or subjected to offensive language.
- 5) If the employee is compelled to answer questions, the employee will be notified of the expectation to answer all questions fully and truthfully to the best of the employee's ability subject to discipline up to and including termination.

- 6) The interview will be reasonable in time in consideration of the nature of the allegations.
- 7) The employee and Association representative will be permitted reasonable break periods.
- 8) The Association representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose statements made by the employee to the representative for purposes of the representation.
- 9) As soon as it is determined that the employee may be charged with a criminal offense, the employee must be informed of the employee's right to consult with criminal defense counsel with respect to the criminal charge.
- 10) In the event that another interview is needed, the employee and Association will be provided a copy of any audio/video recording or transcript (if prepared) of the prior interview before the subsequent interview takes place.

c. Due-Process/Loudermill Meeting:

Prior to the imposition of a disciplinary action, the employee and Association will be given the opportunity to have a Due-Process/*Loudermill* meeting. The County will provide a written Notice of Intent to Discipline ("Notice of Intent") to the employee and Association at least ten (10) calendar days prior to the Due-Process meeting. The ten (10) calendar day notice period may be waived by mutual agreement between the County and Association. The Notice of Intent will include the following information: (1) the nature of the charges, (2) the findings of the investigation, (3) the policy violations or misconduct sustained, and (4) notice of the disciplinary sanctions being considered. In addition, with its Notice of Intent, the County will provide the employee and Association a full and complete copy of the investigation file, including but not limited to audio/video files.

The Due-Process meeting is voluntary, and the employee may have an Association representative present on their behalf. The employee or Association may also provide a written statement in lieu of the Due-Process/*Loudermill* meeting so long as the statement is provided to the County no later than the scheduled meeting.

d. Internal Investigations:

The County will make reasonable efforts to conduct and conclude internal investigations promptly. The County will notify an employee when an investigation is completed and the result of the investigation. The ability to complete an internal investigation in a timely manner depends on many circumstances that are not

necessarily under the County's control. In the event an internal investigation is not concluded within ninety (90) calendar days from the date of initial notice of investigation the County will provide the employee and Association with a general explanation of the reasons for the delay and the expected duration and completion, not to exceed twelve (12) months in total. Timelines do not apply to those factors set forth in ORS 236.360(6)(b).

The County may reopen an investigation upon discovery of new material information or evidence resulting from the employee's pre-disciplinary response or the evidence could not have been discovered sooner without extraordinary measures.

Appeals shall be processed through the grievance procedure starting at Step II within thirty (30) calendar days of the effective date of the disciplinary action.

Section 3.

The County will provide a copy of imposition of any disciplinary action to both the employee and Association outlining the specific reason for such action.

Section 4.

If the County has reason to discipline an employee, it shall not be done in manner that is likely to embarrass the employee before other employees or the public. Nor shall said discipline be done in a manner personally demeaning of the employee.

Section 5.

A probationary employee shall be afforded the opportunity to grieve alleged contract violations pursuant to Article 21, Settlement of Disputes, of this Agreement; however, this shall not include any matter involving discipline and/or discharge. This provision applies only to an employee's initial probationary period with the County.

Section 6.

Written reprimands, shall be considered stale after twenty-four (24) months, and temporary pay reductions after thirty-six (36) months, and cannot be used as a basis for progressive discipline if no further counseling or discipline has been imposed for similarly related conduct, except for notice of rule.

Section 7.

No material reflecting critically on an employee shall be placed in an employee's personnel file until the employee has been given the opportunity to acknowledge receipt, whether in person or electronically. The employee shall have the right to attach employee comments to anything placed in the employee's personnel file or Watch Commander's training file.

Section 8.

No grievance material shall be kept in the personnel file other than grievances resulting from disciplinary action.

Section 9.

Prior to any changes in the Sheriff’s or the County’s policies on complaint and discipline procedures which are applicable to the Sheriff’s Office employees represented by the Association, including but not limited to CCSO Policy 18 (PSU) and the PSU Procedure Manual, the Association shall be given notice of those changes and an opportunity to provide comment or demand to bargain on the changes before they are adopted to the extent required by the bargaining law.

Section 10.

At the completion of the investigation, regardless of the findings the employee under investigation and/or the Association may review the PSU investigation file in accordance with PSU policy.

In the event of a public records request for disciplinary, investigatory, or personnel file materials, the County and/or Sheriff’s Office will provide written notice to the employee prior to the release and subject to public records law. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of disclosure under *Brady* of disciplinary, investigatory, or personnel file materials to a prosecutor, the County and/or Sheriff’s Office will provide written notice to the employee prior to release. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of a request by a prospective employing law enforcement agency for disciplinary, investigatory, or personnel file materials pursuant to the requirements of HB 4207 (2020), the County and/or Sheriff’s Office will provide written notice to the employee prior to the release and subject to HB 4207 (2020).

ARTICLE 21 - SETTLEMENT OF DISPUTES

Section 1. Grievance and Arbitration Procedure.

Any grievance or dispute which may arise between the parties involving the application, meaning or interpretation of this Agreement, shall be settled in the following manner:

STEP I. An Association representative, with or without the employee; shall take up the grievance or dispute with the employee’s immediate Division or Watch Commander within thirty (30) calendar days of the earliest date of either the employee grievant or Association Representative knew or should have known of the alleged grievance. The Division or Watch commander shall then attempt to adjust the matter and respond to the Association representative within fourteen (14) calendar days.

STEP II. If the grievance has not been settled, it may be presented in writing by the Association representative to the Sheriff or their designee within fourteen (14) calendar days of the Division or Watch Commander’s response. After receiving notification, the Sheriff or their designee shall respond to the Association representative in writing within fourteen (14) calendar days.

STEP III. If the grievance has not been resolved, it shall be presented by the Association representative to the Board of County Commissioners or its designees within fourteen (14) calendar days of the response of the Sheriff's Office. After receiving notification, the Board of County Commissioners or its designees shall respond in writing to the Association Representative within fourteen (14) calendar days.

STEP IV. Arbitration: If the grievance is not resolved at Step III, the Association may provide written notice and request for arbitration within fourteen (14) calendar days after the reply of the Board of County Commissioners.

If arbitration is requested, the parties shall forthwith agree upon an arbitrator who shall act as sole arbitrator of the dispute. The parties agree that any decision of the arbitrator which is within the scope of this Agreement shall be final and binding upon them. In the event that the parties fail to agree upon the selection of an arbitrator, a list of arbitrators shall be requested from the Employment Relations Board of the State of Oregon. The list requested shall consist of seven (7) arbitrators. Each party shall, in turn, strike one arbitrator at a time from the list until one name remains. The Association takes the first strike.

The arbitrator whose name remains shall act as the arbitrator of the dispute. The arbitrator shall not have authority to modify, add to, alter or detract from the provisions of this Agreement. The arbitrator shall exercise all powers relating to admissibility of evidence, conduct of the hearing and arbitration procedures, provided that in so doing, he shall not contravene any provisions of this Agreement. The compensation of the arbitrator and all expenses incurred by him/her shall be borne by the party against whom the arbitrator's decision is adverse. However, the arbitrator shall have the power to require the parties to share in the expense of the arbitration proceeding in any proportion that the arbitrator deems reasonable.

Section 2.

If the County fails to adhere to the response time outlined above, such failure will allow the grievance to proceed to the next step in the process within the timelines above. Any of the time periods set forth in this Article may be extended upon mutual agreement of the parties.

Section 3.

By mutual agreement, any grievance filed under the terms of this article may be referred to mediation at any time during the grievance process. The Association and the County agree to equally split the cost of such mediation.

ARTICLE 22 - MISCELLANEOUS

Section 1. No Discrimination.

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit. There shall be no discrimination against any employee in the bargaining

unit as to age, sex, marital status, race, disability, color, creed, religion, sexual orientation, national origin, or political affiliation or other status as applicable by State or Federal law. The Association shall share equally with the County the responsibility for applying this provision of the Agreement.

The County agrees not to interfere with the rights of employees to become members of the Association, and there shall be no discrimination, interference, restraint, or coercion by the County, or any County representative, against any employee because of Association membership or because of any other cause prohibited by law.

Section 2. Department Policy.

The County agrees to furnish each employee in the bargaining unit with an electronic copy of all existing work rules within thirty (30) days after they become effective. New Association members shall be provided a copy of the rules.

Employees shall comply with all existing rules that are not in conflict with the terms of this Agreement, provided the rules are uniformly applied and uniformly enforced.

The County will comply with ORS 243.698 when the County seeks to change policies or work rules.

Section 3. Adequate Protection.

The County is dedicated to the principle of adequate levels of safety and service in the Sheriff's Office. Matters related to safety may be brought to the safety committee or command staff for review.

Section 4. Copies of Collective Bargaining Agreement (CBA).

The CBA will be available on the County website. Employees may print a copy at work once per year.

Section 5. Over/Under Payments.

Any employee knowingly receiving unauthorized payments has the obligation to call such known errors to the attention of their supervisor. Notwithstanding the foregoing, if the County discovers that an employee is receiving unauthorized payments, it may recover such payments as provided below.

A. Underpayments

When an error occurs resulting in a negative impact on the employee, upon notification by the employee in writing to the Payroll Manager, and verification by the payroll division, payment in correction of the error shall be made in the employee's paycheck for the current pay period.

B. Payments in Error

When an employee receives payments due to a clerical, technical, or computer error through no fault of the employee, and where the employee did not and could not reasonably

have known that the error occurred, the employee will only be liable for, and the County shall only recover, the overpayment for a period of one-hundred and eighty (180) days preceding the date of discovery of the error. If the discovery of the error is made by the employee who notifies the Payroll Manager in writing within ten (10) working days of discovery of the error that they believe their pay is incorrect and the County does not subsequently make a correction to stop the overpayment by the next payroll period after notification, the employee will not be liable for additional overpayments that occur following the date of notification.

C. Repayment to the County

As soon as the overpayment is known, the County will make every effort to recover overpayments by payroll deduction over a reasonable period of time.

1. The County Payroll Manager shall notify the employee in writing of the overpayment which will include information supporting that an overpayment exists, and the amount of wages and/or benefits to be repaid. For purposes of recovering the overpayments by payroll deduction, the following shall apply:
2. The employee and the County shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following the written notification.
3. If there is not mutual agreement at the end of thirty (30) calendar days, the County shall implement the repayment schedule stated in subsection (7) below, unless the employee or Association files a grievance under subsection (5) below.
4. If the overpayment amount to be repaid is more than twenty-five dollars (\$25), the overpayment shall be recovered in amounts not to exceed twenty-five dollars (\$25) per payroll period. The employee may elect a higher repayment amount. If an overpayment is less than twenty-five dollars (\$25), the overpayment shall be recovered in a lump sum deduction from the employee's paycheck.
5. An employee who has a factual disagreement with the County's determination that the overpayment has been made to the employee may grieve the determination through the grievance procedure.
6. This article/section does not waive the County's right to pursue other legal procedures and processes to recoup an overpayment made to former employees.
7. Employees can elect to either establish a payment plan through payroll deductions as described in 22(C)(4) above or may elect to pay overpayment in one lump sum. In the event the employee chooses to make a lump sum payment to the County, the County will adjust the amount owed for any tax paid, and

will reduce the amount of employees' wages for the year on the employee's W-2 form by the amount repaid.

ARTICLE 23 - USE OF RESERVE PERSONNEL

Section 1.

The County may maintain a Reserve Program. Typical or similar duties that may be assigned to Reserve Officers on a voluntary/paid basis include, but are not limited to: school athletic events, crime scene security, transporting prisoners within the Patrol Division only and traffic control (accidents/parades). Reserves may be used in conjunction with retirees and/or regular Sheriff's Office members for parks patrol and Lake Oswego Marine Patrol for the length of this collective bargaining agreement and during the period of time utilized for bargaining of a subsequent contract.

Reserve Officers will not be allowed to replace regular fulltime Corrections Officers and/or regular fulltime Deputy Sheriffs due to vacant positions, any absences including, but not limited to, vacations, training, approved leave of absence or to temporarily fill any DPSST certified bargaining unit position.

Reserve Officers may be allowed to work with regular fulltime employees on a voluntary basis and only with the permission of the regular fulltime employee to whom he/she is assigned. Reserves may be assigned with a fulltime employee and paid in emergency situations, (i.e., acts of God, natural and man-made disasters, civil disorders within the County).

Section 2.

The County and the Association agree that Reserve Deputy Sheriffs being hired to perform duties listed in Section 1 must be graduates of the Clackamas County Sheriff's Academy or an equivalent law enforcement academy conducted in the state of Oregon.

Section 3.

Upon request, the Association will be provided by the County every quarter a list of all voluntary and paid duties and hours performed by reserves.

ARTICLE 24 - DUES & CHECKOFF

Section 1.

All employees whose classification or job title is included in Article 1, Recognition, of this Agreement may voluntarily join the Association as a member. The County agrees to deduct dues, fees, costs, charges, and assessments in the amounts determined by the Association from the compensation of each employee who individually authorizes such a deduction in writing on the authorization form provided by the Association. Such authorization shall be terminable upon such notice as is specified in the authorization. The County shall deduct such authorized amount each pay period from each employee's compensation and remit such amounts monthly to the Association Treasurer. ""

Section 2.

Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues deduction for that calendar month. ’

“”Section 3.

The County will not be held liable for check off errors but will make proper adjustments with the Association for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues check off, an updated list of eligible members of the bargaining unit will be delivered to the Association. Such lists shall include all members paying dues in the previous pay period. Section 4.

The Association agrees to indemnify, defend, and hold the County harmless from and against any and all claims, suits, orders or judgements brought against the County as a result of the County’s compliance with the provisions of this Article and to reimburse any fees, costs, or expense incurred by the County in connection with the same. Notwithstanding the foregoing, the County will cover its costs associated with notifying the Association of any such claim.

ARTICLE 25 – WORKERS’ COMPENSATION

Section 1.

All County employees will be insured under the provisions of the Oregon State Workers’ Compensation Act for injuries that arise out of and occur in the course of employment for the County. The County is self-insured for workers’ compensation claims. The County and Association acknowledge the right of employees to receive workers’ compensation benefits as provided by state law and this Article.

Section 2.

The County will compensate the employee for injuries that arise out of and occur in the course of employment where the claim has been accepted in an amount equal to the injured employee’s regular pay, including any regular additional pay, such as longevity, that the employee was receiving at the time of the injury for up to and including 180 days from the date of injury. This wage continuation provision will continue for up to and including 180 calendar days from the date of injury, and is subject to the following conditions:

- A. The day of injury shall be considered a workday, and the employee will receive their normal salary for that day.
- B. The waiting period as stated in ORS 656.210 will be charged to sick leave or other accrued leave if available unless total temporary disability exceeds fourteen (14) consecutive days. Then, workers’ compensation covers from the first day.
- C. The employee’s regular pay will be subject to all standard deductions, such as income tax and employee benefits, as required or allowed under Federal and State Law.

- D. While the employee is receiving wage continuation under this provision, the employee will continue to receive all other County health and welfare benefits the employee was enrolled in at the time of the injury unless prohibited by law, rule, and regulation or provider contract.

Section 3.

After one hundred and eighty (180) calendar days from the date of injury, the Board of County Commissioners retains the discretion to continue payment and benefits beyond that guaranteed under the statutes governing workers' compensation benefits. If the injured employee requests wage continuation beyond one hundred and eighty (180) calendar days from the date of injury, the injured employee will be required to present to the Board of County Commissioners through its designee Human Resources, a physician's statement setting forth the nature of injuries, current condition, and anticipated length of absence or date of return.

After one hundred and eighty (180) calendar days from the date of injury, the employee may elect to use accrued leaves to supplement the difference between workers' compensation benefits and the employee's regular pay (including any regular additional pay).

Section 4.

Full medical and dental insurance coverage shall be provided for employees for a minimum of twelve (12) months from the date of injury as long as employee remains employed during this period. Employees are responsible for any applicable insurance premium cost share as provided for in Article 11. Further coverage shall be at the discretion of the Board.

Section 5.

The County may request the employee to return to modified or light duty, subject to medical release. An injured employee that refuses to return to modified or light duty may be subject to loss of reinstatement rights. (See also Article 37, Light Duty, Section 3.)

ARTICLE 26 - REGULAR PART-TIME EMPLOYEE BENEFITS

Benefits for regular part-time employees covered by this Agreement shall be as follows:

- A. Employees working an average of twenty (20) hours per week shall receive health insurance coverage as if they were full-time employees.
- B. Employees working an average of thirty (30) hours per week shall receive dental insurance coverage as if they were full-time employees in addition to health insurance.
- C. Employees working an average of thirty (30) hours per week shall be covered by the County's life insurance and disability insurance policies in addition to health insurance.
- D. Part-time employees must serve a waiting period two (2) full calendar months consistent with County policy to qualify for the above benefits.

- E. Employees working less than full-time will be eligible for PERS if they meet the requirements of ORS Chapter 237.
- F. Part-time employees will receive seniority, vacation, sick and other accruals prorated based on budgeted FTE.
- G. Employees shall be eligible to receive merit/step increases and time in service for vacation accrual and longevity pay as of the first of the month based on accumulated calendar months of service.
- H. Employees shall receive paid holidays only for those holidays which are observed on days the employee is regularly scheduled to work.
- I. Overtime will only be paid for all authorized work performed in excess of forty (40) hours in any work week or if the employee is required to work over twelve (12) hours on a regularly scheduled work day. The County and employee may also agree to a flexible schedule for a particular work week which does not create overtime obligations unless required by operational need.
- J. All other provisions of this Agreement not specifically modified above shall apply to part-time employees.

ARTICLE 27 - COMPENSATORY TIME OFF

If agreed to by an employee and their supervisor, compensatory leave may be taken in lieu of pay for overtime. Such leave shall not accrue beyond forty (40) hours.

ARTICLE 28 - PUBLIC EMPLOYEES RETIREMENT SYSTEM

Section 1. Employer “Pick-up” of Employees PERS/OPSRP Contribution.

Eligibility for Public Employees Retirement System (PERS) and Oregon Public Service Retirement Plan (OPSRP) is subject to ORS Chapters 238 and 238A. The County agrees to pay employee’s share of contribution on behalf of employees as set by Oregon legislature.

In the event that during the life of this agreement it becomes impossible for reasons of law, regulation or decisions for the County to pay the six percent (6%) employee contribution to PERS, then that sum shall be contributed on behalf of the employee to a retirement benefit, such as a state retirement account, County deferred compensation plan, or other individual retirement account. The intent of the parties is that the employees will be made whole in terms of the six percent (6%) retirement contribution by the County.

Section 2. Notice of Intent to Retire.

- 1. Employees are requested to provide a ninety (90) day written notice of intent to retire.
- 2. Retire/Rehire program:
 - A. The parties recognize that there can be a large time lag between retirements and hiring new employees to meet operational need. The intent of this

program is to improve the efficiency with attrition and maintaining qualified staffing levels. Thus, as soon as the position filled by a rehired retiree is filled by a regular employee, the County may end the employment of the rehired retiree. The County will attempt to provide two weeks' notice prior to the rehire retire position ending.

- B. For DPSST certified and non-certified, employees who provide at least twelve (12) months' notice, but no more than eighteen (18) months' notice, of commitment to retire under PERS or OPSRP, the County, at its discretion, may offer the opportunity to return to work to employees who have officially retired from the County and submitted their retirement to PERS for a "Rehire Period." The Rehire Period shall be up to an additional one hundred and eighty (180) calendar days'; or an amount of time not extended past December 31, 2024 for employees rehired under Senate Bill 1049 (2019). The County may end the Rehire Period at its discretion at any time. Within thirty (30) days of notice from the employee, the County will give notice to the employee that they are selected for the program. The County's decision to not select an employee for the Retire/Rehire program is not subject to the grievance procedure. An employee who is not selected for the Retire/Rehire program may withdraw their notice to retire within thirty (30) days of the County's notice non-selection and the conditions of the program will not apply to that employee.
- C. Employees selected for the Retire/Rehire program are subject to the following:
 - 1) Employee loses their seniority upon retirement. Seniority within the employee's assigned job/classification resets to the rehire date.
 - 2) Employee will have no more than five (5) calendar days off between retirement and returning to work to initiate the new employment relationship.
 - 3) Employee will not be eligible to receive Health and Welfare benefits under Article 11, including voluntary benefits; however, the County will continue to provide EAP. Rather, employee may receive Health and Welfare benefits by enrolling in the IRMT plan. The County will continue to pay the employee's IRMT contribution during the Rehire Period as set forth in Article 11.
 - 4) Employee will be an Association member with limited benefits:
 - a) Employee will be afforded the rights as provided under Article 20 for alleged disciplinary actions, however, employee retains no rights to grieve discipline or discharge past Step 2 of Article 21, with final decision by the Sheriff. The County may end employment for operational need not related to discipline and layoff and recall provisions of the CBA and County Code will not apply. If the

investigation or grievance process exceeds the employment period, the employment status ends even if the investigation or grievance process is unresolved.

- b) Employee may be returned to any previously held classification subject to operational need. If not returned to their classification upon retirement, employee will be paid the step closest to their previous wage. Employee will earn compensation including incentives as applicable for the assigned work. The County, at its discretion, may suspend an employee's specialty assignment.
 - c) Sick Leave will be earned and used consistent with Oregon Paid Sick Leave law.
 - d) Employee is eligible for Holidays as provided by Article 7..
 - e) Employee will not earn any additional leave accruals except for two (2) personal leave days banked upon rehire. Such days have no value upon separation of employment. Employee may also request time off without pay subject to supervisory approval.
 - f) Employee is not eligible for compensatory time accrual.
 - g) Employee is not eligible for tuition reimbursement.
 - h) Employee is eligible for all terms and conditions of this Agreement unless otherwise provided above.
- D. Upon receiving such notice from an individual employee, the County will initiate hiring to adjust for the appropriate staffing level as determined by the County.
- E. The County is not precluded from offering work to retirees as a temporary employee.

ARTICLE 29 - LAYOFF

Section 1.

This Article is to apply to all employees covered by this collective bargaining agreement. Where the term "Sheriff" is used, it shall also refer to the "appointing authority" if an employee is in another Department.

The Sheriff may lay off an employee when the Sheriff determines it necessary to abolish a position or that a shortage of funds or work exists. Layoff shall be by specific job classification and shall be in ascending order (bottom to top) of an employee's seniority while in the classification, as described in this Article for purposes of layoff. An employee shall be given written notice of a pending layoff at least fifteen (15) calendar days before

the effective date stating the reasons for the layoff and the fact that an election to displace another employee pursuant to Section 3 of this Article must be made within six working days of receipt of said notice.

Section 2.

Layoffs shall occur in the following manner:

- A. The Sheriff shall determine the specific positions to be vacated.
- B. The Sheriff will notify, in writing, all affected employees and the Association at least fifteen (15) calendar days prior to the effective date of the layoff of all employees in all affected classifications.

Section 3.

Where an employee is laid off, including former bargaining unit members promoted to non-represented positions within the Sheriff's Office, that employee may elect to displace (bump) an employee in another job classification at the same or a lesser pay range provided that the employee is qualified to perform the duties of the position and the employee electing to displace another has a greater seniority as defined below. Layoff and bumping shall occur within a department only.

- 1) For layoff bumping purposes in DPSST certified law enforcement positions, an employee's seniority shall be measured from the date and time they were hired or promoted into the classification into which they are bumping and shall include all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.
- 2) For layoff bumping purposes in non-DPSST certified positions, seniority shall be measured by the date and time of hire by the Sheriff's Office.
- 3) When layoff bumping occurs, the "bumped" employee who is displaced is the employee within the job classification with the least Department seniority, measured from the date and time of hiring or promotion into that classification, including all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.

Employees who are reinstated from a layoff register retain previously accrued seniority, not including the time on layoff status while not working for the Sheriff's Office.

For purposes of this Article, for DPSST certified law enforcement classifications, "qualified to perform the duties of the position" means that the employee has previously held the classification with this Department.

If an employee exercises a layoff bumping right to a position where they had not completed the probationary period, they must complete the remaining time in probationary status.

An employee who transferred from a regular-status position as a Jail Deputy to a position as a Deputy Sheriff, or from a regular status position as a Deputy Sheriff to a position as a Jail Deputy, and is then laid off, may elect to displace (bump) an employee in the prior classification previously held, if the employee electing to displace another has greater seniority as defined in this section.

Section 4.

Employees who held training positions as Recruit Deputy Sheriffs or Recruit Jail Deputies and successfully transferred to Deputy Sheriff or Jail Deputy classifications shall be credited with additional seniority for layoff and/or layoff bumping purposes as provided by the following rules:

- (a) For employees who have held positions as Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (b) For employees who have held positions as Recruit Jail Deputy and/or Jail Deputy, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (c) For employees who have been employed as a Recruit Jail Deputy and/or Jail Deputy prior to being employed as a Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for purposes of layoff bumping into a position as a Recruit Jail Deputy or Jail Deputy includes all time employed in any of those positions. This “blended Seniority” under Section 4(c) of this Article applies only to bumping resulting from layoff, and not to the identification of positions for layoff under Article 29, Section 1. This paragraph applies in a similar manner to employees who have been employed as a Recruit Deputy Sheriff and/or Deputy Sheriff prior to being employed as Recruit Jail Deputy and/or Jail Deputy.

Section 5.

When an employee displaces another employee under the conditions set forth above, the employee taking the position will be paid the rate of pay within the pay range of the employee’s new assignment and classification which most nearly approaches the rate of pay actually earned in the job from which the employee was laid off.

Section 6.

Employees who have been laid off or who have displaced another employee shall be placed on the layoff register, for the classification held at the time of their layoff, in order of layoff seniority including time spent in an equal or higher classification. Reinstatement shall be offered to those employees on the layoff list in descending order from top to bottom of layoff seniority possessed at the time of layoff prior to hiring any new employees. In other words, recall will occur so that the last employee laid off will be the first recalled. An employee’s duration of placement on the layoff register shall not exceed twenty-four (24) months from the employee’s layoff date.

Notice of recall shall be made by certified mail. Employees shall be responsible for keeping the County informed of their correct address. Failure to respond to such recall notice within five (5) calendar days of receipt of the notice shall cause loss of recall eligibility.

Employees recalled shall have accrued but unused sick leave at the time of lay off restored.

ARTICLE 30 - TUITION REIMBURSEMENT

Subject to a maximum of one thousand five hundred dollars (\$1500.00) per employee per fiscal year, the County will reimburse the employees for the cost of books and tuition for the completion of any approved course of study directly related to their job. Courses must be from an accredited institution such as a community college, college or university. Proof of successfully passing an approved course must be submitted prior to reimbursement. Exceptions must be approved by the Sheriff in advance of the course of study.

ARTICLE 31 - INCENTIVE PROGRAM

Section 1. Incentive Schedule.

In order to maintain and improve officers' law enforcement skills, as well as to increase the participation of officers in the life of the community, the County will implement an incentive program consisting of training and community service, Department of Public Safety Standards and Training certification, superior firearms qualification and supervisory certification. The following premiums are paid subject to the conditions of this Article:

INCENTIVES	Monthly Amounts 7/1/2019	Monthly Amounts 7/1/2020	Monthly Amounts 7/1/2021	Monthly Amounts 7/1/2022
DPSST Intermediate Certification or	\$ 42.44	\$ 43.54	\$44.32	COLA
DPSST Intermediate Certification w/Bachelors	\$ 72.11	\$ 73.98	\$75.31	COLA
DPSST Intermediate Certification w/Masters or Ph.D.	\$ 84.85	\$ 87.05	\$88.63	COLA
DPSST Advanced Certification	\$ 93.04	\$ 95.46	\$ 97.18	\$146.00
DPSST Advanced Certification w/ Bachelors	\$158.17	\$162.28	\$165.21	\$250.00
DPSST Advanced Certification w/ Masters Phd	\$186.04	\$190.87	\$194.31	\$287.50
Marksmanship Pay	\$ 42.44	\$ 43.54	\$ 44.32	COLA
Educational @ 75 hrs. annually or	\$134.42	\$137.91	\$140.40	COLA
Educational @ 50 hrs. annually or	\$ 93.04	\$ 95.45	\$ 97.18	COLA
Educational (@ 25 hrs. annually	\$ 46.51	\$ 47.72	\$ 48.58	COLA
DPSST Supervisory Certificate	\$106.07	\$108.83	\$110.79	\$163.00
DPSST Supervisory Certificate w/Bachelors	\$180.34	\$185.03	\$188.36	\$278.00

INCENTIVES	Monthly Amounts 7/1/2019	Monthly Amounts 7/1/2020	Monthly Amounts 7/1/2021	Monthly Amounts 7/1/2022
DPSST Supervisory Certificate w/Masters PhD	\$213.16	\$218.70	\$222.63	\$329.00
Community Service Officers w/AA degree	\$ 42.44	\$ 43.54	\$44.32	COLA
Community Service Officers w/BA degree	\$ 93.04	\$ 95.46	\$97.18	COLA
IAI Certified Crime Scene Investigator (Basic)	\$ 26.39	\$ 27.07	\$27.57	COLA
IAI Certified Crime Scene Investigator (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Investigator (M/phd)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Analyst (Intermediate w/ Bachelors)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Intermediate with Masters/PhD)	\$ 79.79	\$ 81.86	\$83.34	COLA
IAI Certified Senior Crime Scene Analyst (Advanced)	\$ 87.51	\$ 89.78	\$91.40	COLA
IAI Certified Senior Crime Scene Analyst (Advanced w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IAI Certified Senior Crime Scene Analyst (Advanced with Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IAI Certified Latent Print Examiner	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner	\$ 87.51	\$ 89.78	\$91.40	COLA
IACIS Certified Forensic Computer Examiner (w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner (w/Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IACIS Certified Mobile Device Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA
IACIS Certified Advance Windows Forensic Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA

The above amounts will increase by an amount equal to the pay plan increases provided in Article 12 as noted above.

Section 2. Marksmanship Pay.

To receive marksmanship pay, a DPSST certified employee must score a minimum of eighty-five percent (85%) on the annual spring firearms qualification course. The content/criteria of the test will be determined by CCSO Firearms Training Unit, subject to approval by the Undersheriff. The employee may test for marksmanship pay only one time

per year and there will be no make-up courses. The County shall pay for all authorized fees incurred at the firing range.

An employee who scores a minimum of eighty-five percent (85%) on this qualification will receive additional compensation as described above effective the pay period following qualification. This pay will remain in effect for one year, or until the effective date of the next annual spring firearms qualification whichever is later.

Practice ammunition: DPSST certified employees will be provided six (6) boxes of practice ammunition per fiscal year subject to available supply for use at the CCSO facility, but no more than two (2) boxes per visit. No later than May 15 of each year, the Department will notify the Association if it anticipates a shortage of ammunition. The Department retains the sole discretion to determine if a shortage exists. Upon request by the Association, the parties may meet and confer about an adequate supply of ammunition.

Section 3. IAI and IACIS Certifications.

Effective in the first pay period of the month following execution of this agreement, Employees who use the listed certifications in the regular duties of their classification will receive the monthly values noted above. Employees receiving any DPSST certification are not eligible for any of the below certifications.

Certifications: (inclusive of basic/intermediate/advance and education: see chart Section 31.1)

1. IAI Certified Crime Scene Investigator
2. IAI Certified Crime Scene Analyst or Senior*
(*If receiving Analyst incentive, the Investigator incentive is not paid.)
3. IAI Certified Latent Print Examiner
4. IACIS Certified Forensic Computer Examiner
5. IACIS Certified Mobile Device Examiner
6. IACIS Certified Advanced Windows Forensic Examiner

Section 4. DPSST Certification.

Employees who obtain a DPSST Intermediate Certificate in law enforcement or corrections will be paid additional compensation as described above.

Employees who obtain a DPSST Advanced Certificate in law enforcement or corrections will be paid additional compensation as described above.

Certification pay will commence effective the pay period following submission of a successful application for certification to DPSST.

This incentive pay is not cumulative and members are eligible for one level only.

Section 5. Education Pay.

All employees of Clackamas County Sheriff's Office who are members of the bargaining unit are eligible to participate in Education Pay.

This incentive pay is not cumulative and members are eligible for one level only.

Employees wishing to participate in education pay must receive prior approval of their courses.

Employees will receive ten (10) hours credit for each successfully completed quarter hour of college credit classes.

Education credits will normally be granted for any college training that is job-related. Credits will also be awarded for non-job-related college courses if they are required courses as part of a degree program in a job-related field. Approved jobs related training courses attended during off duty hours will count towards training points.

The Education pay program is separate from the Tuition Reimbursement Program. The fact that a training or college course is approved for training points does not necessarily mean that it will be approved for tuition reimbursement.

Education hours will be compiled by the Training Officer and submitted to payroll prior to June 15 each year. Pay will commence with the first payroll period in July and will continue for a period of one (1) year.

Section 6. Supervisory Pay.

Employees who complete the DPSST Supervisory Certification Program shall be granted additional compensation as described above. This incentive pay is not cumulative employees are not eligible for other DPSST incentive pays.

Section 7. Community Service Officers with AA or BA degree.

Community Service Officers who attain an Associate's degree shall be paid additional compensation as described above. Community Service Officers who attain a Bachelor's degree shall be paid additional compensation as described above. Community Service Officers applying for compensation by way of this Section shall have completed their degree work in a law enforcement field or an approved course of study related to a law enforcement career. This incentive pay is not cumulative and employees are eligible for one level only.

Section 8. Detective and Evidence Technician Incentive Pay Program.

Description. For the classifications of Detective and Evidence Technician, a Detective or Evidence Technician employee may receive the following incentive pay subject to exceeding expectations in yearly evaluations as provided below.

Amounts of Incentive Pay. This is a tiered incentive pay program:

2.5% of base pay for employees in continuous service with the classification between 5 year (60 months) to 10 years (120 months).

5.0% of base pay for employees in continuous service with the classification for over 120 months.

Review Time Period. Incentive pay will be based on previous year employee evaluation as defined below.

Qualification and Yearly Evaluation:

1. Rotation Within Various Units of Detective Division.

Detectives may be rotated through the various units when necessary to suit the needs of the Sheriff's Office. Seniority is still a consideration with regard to shift schedules and days off.

2. Evaluation Ratings.

The standard performance evaluation form will be used to evaluate and document the employee's performance for the year. An employee must receive a "Meets" or "Exceeds" rating on their performance evaluations and have the required time in grade to be eligible to receive the incentive pay.

Detectives or Evidence Technician will be evaluated on the following: report reviews, investigative audits, case reviews, training file contents and supervisory input. Other considerations may include: response (when available) to the needs of the Sheriff's Office while off duty, assisting uniform personnel in the field when on duty and available, closely monitoring dispatch calls for service while on duty and in the field, attending required training (unless excused), and assisting with the training needs of the Sheriff's Office when requested.

Appealing Decisions of "Does not Meet Criteria." If an employee does not qualify for the Incentive Pay Program because their evaluation was below the rating criteria set forth above, then the employee may question the determination and have the opportunity to be heard. Management would typically follow its chain of command in responding to the employee starting with a Lieutenant then up to the Division Commander. The Division Commander's decision is final. The Association and employee agree that the employee has no further avenue for review and cannot use the grievance process. An employee should check with their supervisor midway through their evaluation period and inquire as to their performance.

Changes to Incentive Plan. Any alterations to this plan deemed necessary will only be made through negotiations between the County and the Association.

Section 9. Contract City Detective Incentive Pay.

The Detectives who are assigned full-time to the cities of Happy Valley or the City of Wilsonville shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for the period of time the employee is assigned to that contract city.

In consideration of the additional compensation paid to contract city Detectives, the Sheriff shall have the authority to move said Detectives within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues associated from the move.

Because the Contract Cities Oversight Committee brought forth this issue and the County is only serving as its administrator, the contract cities retain sole discretion to decide whether to continue, modify or cease the incentive pay program. In the event the contract cities decide to modify or cease this incentive pay program, the County will provide the Association with thirty (30) calendar days' advance notice of the contract cities' decision; however, the contract cities' decision is not a subject of bargaining or grievance.

Section 10. Detective Sergeant Incentive Pay and CCITF Sergeant Pay

Sergeants assigned to CCITF shall receive additional compensation equivalent to five percent (5%) of their base pay for the length of their assignment.

Sergeants assigned to the Investigation Division shall receive additional compensation equivalent to six percent (6%) of their base pay for the length of their assignment. However, on the first day of the month after ratification the premium will be reduced to five percent (5%). This incentive pay does not apply to Sergeants assigned to CCITF (*Clackamas Co. Interagency Task Force*).

In consideration for the additional compensation paid to Sergeants assigned to the Investigation Division the Sheriff shall have the authority to move the Sergeants within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

Section 11. Field Training Officer Pay.

Any employee assigned the responsibility of a Field Training Officer or a person supervising a Field Training Officer shall receive premium pay in the amount of ten percent (10%) of the employee's base pay as set forth in the pay plan for the length of the assignment.

The following classifications are eligible for Field Officer Pay:

- a) Jail Deputy
- b) Jail Sergeant
- c) Deputy Sheriff
- d) Sergeant
- e) Detective
- f) Community Service Officer
- g) Evidence Technician
- h) Office Specialist 1 & 2
- i) Any other classification that uses an approved Field Training and Evaluation Program (including the above listed).

Section 12. Bilingual Pay.

Any employee who is fluent in Spanish, Russian, American Sign Language, or a language agreed upon by the CCPOA and the Sheriff and in the course of the employee's duties uses that language shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan.

Proficiency will be established by a Human Resources approved testing process and/or by the FBI. All costs for initial testing, documentation and retesting shall be borne by the Sheriff's Office. Employees may be required to recertify fluency every five (5) years.

Section 13. Motor Deputy Pay.

Employees may be assigned to Motorcycle Patrol. In consideration of the additional specialized training and experience for employees working in the assignment of Motorcycle Deputy, employees shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for that period of time that the employee is assigned as a Motor Deputy.

In consideration of the additional compensation paid to Motor Deputies, the Sheriff shall have the authority to move the Motor Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

Section 14. Canine Assignment and Premium Pay.

Deputies may be assigned to Canine duties at the discretion of the Department. It is anticipated that Canine Deputies will provide maintenance of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that four (4) hours per week [thirty-four (34) minutes a day] is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

Canine duties require specialized training and experience. Deputies assigned to Canine Patrol will receive an additional incentive of five percent (5%) base pay per pay period during the period of the assignment.

In consideration of the additional compensation paid to Canine Deputies, the Sheriff shall have the authority to move the Canine Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

Section 15. SWAT/HNT, CERT, EDU/Bomb, Dive Rescue Team.

Employees assigned to SWAT/HNT, CERT, EDU/Bomb, and Dive Rescue Team are eligible for additional premium pay.

Effective in the first pay period of the month following execution of this agreement, employees serving as a qualified member in good standing will receive a monthly incentive of \$54.16. The Sheriff shall have the authority to discontinue employee participation in these programs as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move. The above amounts will increase by

an amount equal to the yearly pay plan increases provided in Article 12 on July 1, 2021 (\$55.13) and July 1, 2022.

Section 16. Forensic Artist Collateral Duty Premium Pay.

Any employee assigned the collateral duty of a Forensic Artist shall receive premium pay in the amount of one percent (1%) of the employee's base pay as set forth in the pay plan for the length of their assignment.

The Sheriff retains the right to determine the appropriate number of Forensic Artists from the qualified CCPOA members. In consideration of the additional compensation paid to the Forensic Artist(s), the Sheriff shall have the authority to end the collateral duty assignment without a demand from the Association to bargain the decision or any pay issues.

ARTICLE 32 – EQUIPMENT

Section 1. Repair or replacement of personal property or equipment.

The County shall repair or replace an employee's personal property or equipment which the County requires the employee to have while working for the County and which is lost, damaged or stolen beyond usable or safe operating quality in the line of duty except as such is due to the employee's negligence.

Section 2. Vests.

The County shall provide DPSST certified employees with either a vest rated at Threat Level IIA (with sharp object protection) or Threat Level IIIA flexible (with side panels) at the employee's option, and the County will provide up to \$125 for upgrades at the time of replacement or new purchase. The vests shall be replaced per the manufacturer's warranty of performance guidelines (currently 5 years). So long as the vest satisfies the required threat level, the County shall have discretion in selecting or approving vests including matters such as the supplier, price, make or model of the vests. If a qualified employee wants a vest not selected or approved by the County, it shall be the employee's responsibility to pay any differences beyond what the County will pay.

Section 3. Equipment Reimbursement.

Effective January 1, 2016, the County will reimburse DPSST certified uniformed employees in an amount up to ninety (90) dollars per calendar year for the purchase of belts, holsters, footwear, gloves, flashlights, handcuffs, radio equipment, vest upgrade, duty belt gear and approved uniform apparel with insignia that is not provided by the Sheriff's Office (hats, uniform sweaters, external vest carriers and mock turtle necks) to be used in carrying out their assigned duties. The employee shall provide to the County proof of purchase for the equipment items to receive the reimbursement.

Requests for reimbursement with original receipt(s) attached shall be submitted between January 1 and January 15 for equipment purchased in the previous calendar year.

ARTICLE 33 - CLEANING AND CLOTHING ALLOWANCE

Section 1. Uniform Cleaning.

DPSST Certified employees and Community Service Officers required to wear a uniform shall be paid \$20 per month as a cleaning allowance.

Section 2. Clothing Allowance.

Detectives shall receive a uniform allowance of \$600 per year, which shall be paid at a rate of \$50 per month on the first paycheck of each month. Detectives do not receive the uniform cleaning allowance.

ARTICLE 34 - LEGAL DEFENSE FUND

Legal Defense Plan: For DPSST certified employees, the County will contribute towards the PORAC Legal Defense Plan that provides each of its members with an attorney as a direct result of criminal charges, investigation of use of deadly force, or a grand jury appearance against the member arising out of the member's involvement in the scope of regular performance of his or her duty as an employee for the County.

- a. Effective the month following execution of this agreement the County will contribute up to \$6.00 per month toward the premium for each DPSST certified officer paid by reimbursement of invoice provided by the Association for the "PORAC" Plan. Invoices by the Association may be quarterly.
- b. The Association will provide a complete legal defense plan description to the County and advanced written notice to the County of any changes to the plan. Substantive changes in plan benefits are subject to notice and bargaining under ORS 243.698.
- c. The County recognizes that it is not entitled to the work product of the attorneys involved in this program. The County recognizes there exists an attorney client privilege between the attorney and the member.

ARTICLE 35 - SAVINGS CLAUSE

Should any Article, Section, or portion thereof, of this Agreement be determined to be unlawful and unenforceable by statute or constitutional amendment, by administrative rule or federal regulation or by any Court of competent jurisdiction or ruling by the Employment Relations Board, such determination shall apply only to the specific Article, Section or portion thereof, directly specified in the determination, the County may suspend the invalidated Article, Section or portion thereof and, the parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof under ORS 243.698.

ARTICLE 36 - ASSOCIATION RIGHTS

Section 1. Association Executive Board.

Employees selected by the Association to act as Association representatives for grievance processing and other labor matters, shall be known as the Association Executive Board.

The names of employees so designated shall be certified in writing to the County by the Association.

Section 2. Executive Board Release Time.

The Executive Board members of the Association may investigate and process grievances and other labor related matters during working hours, within reasonable limits, and without loss of pay, providing it does not conflict with Sheriff's Office operations. In order to ensure that there is no conflict with Sheriff's Office operations, an absence from duty for the purposes of investigating and processing grievances or other labor related matters, must be approved in advance by a Lieutenant.

Executive Board members may attend regular Executive Board meetings during working hours without loss of pay. Regular Executive Board meetings are typically scheduled for one hour on a monthly basis, however, meetings may last up to 90 minutes due to the press of business. The Association may also from time to time schedule a second regular meeting in any individual month. The Association will provide notification to the County of the date and time of Executive Board meetings held during working hours.

The Association will exercise care to cooperate with the County to make sure there is no undue disruption to County operations caused by the operation of this section.

To accommodate the availability of the Association President to perform Association business, at the mutual agreement of the Association President and the Sheriff, the Association President will be assigned to a shift which includes a majority of its hours Monday through Friday, 8:00 a.m. to 5:00 p.m. Prior to the commencement of the shift bid, the President will meet with management to determine the President's shift assignment.

The Association shall have the right to have a bulletin board and a mailbox in each facility occupied by the Sheriff's Office.

Section 3. Association Negotiating Committee.

Employees selected by the Association to act as Association representatives for negotiations, shall be known as the Association Negotiating Committee. The names of employees so designated, up to a total of five (5) employees, shall be certified in writing to the County by the Association.

Section 4. Negotiating Committee Release Time and Paid Bargaining Time.

Negotiating Committee members may attend negotiation sessions and caucuses held at the same site up to one hour before and during the sessions without loss of pay if held during working hours. If such negotiation sessions or caucuses are held outside of the member's working hours, the member will be paid at the member's regular rate of pay including overtime if applicable. Paid time or release time for negotiating sessions or caucuses will include all time in mediation sessions.

Section 5. County- Association Meetings.

The County or its designee(s) may meet at mutually convenient times with the Association Executive Board, Negotiating Committee or Association officers. All meetings between the County or its designee(s) and the Association shall be held during working hours

whenever possible and without loss of pay. The purpose of the meetings may be to discuss issues which would improve the relationship between the parties.

ARTICLE 37 - LIGHT DUTY

Section 1.

Employees have an ongoing responsibility to notify their supervisor if they are unable to fully perform their regular duties due to injury or illness. The nature of DPSST certified law enforcement positions requires that each officer be physically able to assist fellow officers in time of need. Employees are not required to inform their supervisor of confidential medical information, only the limitations that have occurred because of a medical condition. The County may verify medical information but must do so in a manner that protects medical confidentiality and complies with Federal law (HIPAA) and EPP #42 (Personnel Records).

Section 2.

Training, and specifically defensive tactics training, is an integral part of regular job duties for DPSST certified law-enforcement personnel. An injury may require limited participation in defensive tactics training. The practice sometimes referred to as “tape and play,” is a mutually accepted practice that enables an employee to participate in limited defensive tactics training while simultaneously identifying injuries that must be protected from aggravation during the training activity. Where no physical participation in defensive tactics training is possible due to the extent of illness or injury, mere observation of the training is not an effective means of participation. Employees will be expected to participate in the next scheduled training after their illness or injuries have resolved.

Issues of fitness for duty, including fitness for defensive tactics training, cannot be resolved without the involvement of trained medical professionals who are both knowledgeable about the extent of illness/injury and the specific job duties or training activities of the individual. Questions of fitness for duty will be referred to medical professionals using the County’s standard procedures. Fitness for duty issues (other than minor injuries) should be addressed in consultation with Human Resources, on an ongoing basis and prior to the day of scheduled defensive tactics training.

Section 3.

The rigorous nature of job duties in DPSST certified positions at the Sheriff’s Office creates the need for additional light duty opportunities, over and above the standard County policy limiting light duty to ninety (90) days except in unusual circumstances (EPP #9). For this reason, an additional ninety (90) days of light duty will be available to employee in DPSST certified positions [for a total of one hundred (180) days], upon application to the Sheriff and his approval of such additional light duty. Approval will be contingent on continued available light duty. The Sheriff will grant the additional light duty where (1) it appears to be medically necessary and (2) there is a reasonable probability that the additional light duty will allow the employee to return to regular duty. Light duty for DPSST certified personnel in the Sheriff’s Office will be limited to one hundred and eighty (180) days total, except in unusual circumstances to be determined at discretion of the Sheriff.

**ARTICLE 38 - DEPUTY MEDICAL EXAMINERS, DISASTER MANAGEMENT
DEPARTMENT, AND DISTRICT ATTORNEY INVESTIGATORS**

Section 1. Application of Article.

This Article shall apply to all Deputy Medical Examiners (DMEs) including the Senior Deputy Medical Examiner, the Strategic Program Coordinators in the Disaster Management Department, and the Investigators in the District Attorney's Office.

Section 2. Workweek for DMEs.

DMEs will work a regular rotating schedule of forty-eight (48) hours on duty, spread over three (3) calendar days, and ninety-six (96) hours off duty. In each twenty-four (24) hour period, twenty (20) hours will be considered on duty, with four (4) unpaid hours for rest periods. For payroll purposes, this workweek will be considered as consisting of forty (40) standard paid hours. Each forty-eight (48) hour schedule begins at 1800 hours when the DME arrives at the office to retrieve their County vehicle.

During each forty-eight (48) hour period, the DME on duty is required to be in the office from 0700 to 1800 hours each day. During office hours the DME is responsible for taking three (3) separate ten-minute (10) rest breaks and one (1) separate paid thirty (30) minute meal period.

In addition to the above office hours, DMEs are also required to attend monthly staff and monthly case review meetings, which may or may not occur during their regular forty-eight (48) hour schedule. If such meetings do not occur during a DME's regular scheduled hours, their attendance will be paid at the regular base rate up to forty (40) hours in a work week, and then at the overtime rate thereafter. If such meetings occur during a DME's regular scheduled hours, and a DME cannot attend the Staff Meeting/Case Review (for non-work-related reasons), with the prior approval of management, they may be required to use appropriate leave time or may flex their schedule.

The County and the Association agree that either party may terminate a schedule created under this Agreement at any time for any reason upon thirty (30) days' written notice to the other party. The DMEs will then revert to a shift schedule established by the Disaster Management Department.

If a DME can document that they have been engaged in field work duties, inclusive of office time and/or monthly staff or case review meetings for twenty (20) hours without breaks or meal periods, they shall be entitled to be paid overtime at the overtime rate as outlined in Section 8 below for each hour worked in excess of twenty (20) up to twenty-four (24). If such time crossed into their next scheduled twenty-four (24) hour work period, which begins at 1800, they shall return to straight time.

A DME must take an eight (8) hour rest period after their forty-eight (48) hour on duty period prior to working overtime, unless pre-approved by management. All overtime must be pre-approved by management. If a case comes in within three (3) hours prior to the end of a DME's shift, management, in discussion with the DME, will decide who will be assigned the case.

The Chief Deputy Medical Examiner will take calls and complete that investigation during their shifts when the assigned DME for that shift is on leave or is working another case and cannot respond.

For payroll purposes, the workweek begins Saturday at midnight and ends Friday at 11:59pm.

Section 3. On-Call for DMEs.

When a DME is on approved leave, the hours not covered by the Chief Deputy Medical Examiner's regularly scheduled hours will be offered as on-call duty to the remaining DMEs based on seniority, with the most senior employee being offered first. See also Section 7.

Upon assignment of on-call status, DMEs will receive one (1) hour regular rate of pay for every six hours of on call status, or the equivalent as prorated for duration of the assigned status. If the DME is required to respond to a call, overtime will apply as provided by this Article.

Employees' assigned on-call status are required to be readily available to report to work within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time. While on-call, DMEs will be required to carry and respond to cellular phone or phone calls.

Section 4. Call Back Pay for DMEs.

DMEs who are called to physically report to a worksite outside of their regular forty-eight (48) hour schedule (that is, hours outside of a scheduled shift) will be paid for actual time worked, in fifteen-minute increments, with a minimum of two (2) hours at the rate of pay as outlined in Section 8 below.

Actual time worked during call back hours will be paid at the rate of pay as outlined in Section 8 below, except phone call pay as set forth in Section 5 and Section 8 below. The overtime rate will be paid only up to the start of the regular schedule.

Section 5. Phone Call Pay for DMEs.

DMEs who are on-call and who answer work-related phone calls after work hours will be paid for actual time worked at the rate of pay as outlined in Section 8 below. If the phone call is fifteen (15) minutes or less, the DME shall be paid for fifteen (15) minutes at the rate as outlined in Section 8 below.

Section 6. Leave Hours.

Usage: Use of a day's vacation will consist of twenty (20) hours per day. Use of a day's Sick leave will consist of twenty (20) hours per day. Use of a Holidays will be paid at twenty (20) hours per day. Sick leave hours taken in less than a one-day increment will be hour for hour to the ¼ hour.

Leave accruals are consistent with the other Articles of this contract.

Section 7. Chief Deputy Medical Examiner.

It is recognized that the County may rely on the Chief DME for after hour phone calls, pager, or electronic messages. However, when there is only one DME on shift and that DME is absent from work, the Chief DME will offer any call-back opportunities outside the Chief DME's regularly scheduled hours to the remaining bargaining unit staff on a seniority basis before performing the work himself or herself.

Section 8. Rates of Pay for DMEs.

It is recognized that due to the non-standard schedule that is worked by the Deputy Medical Examiners, the following formulas will be applied to their rate of pay:

- a) Use or payment of the following accrued paid leaves: On-call, Vacation, Sick, Holiday, Personal Day, Bereavement, and Training shall be paid at the regular rate of pay x 1.23075.
- b) Work performed for Call Back, Phone Call Pay, and overtime shall be paid at the regular rate of pay x 1.846125.

Historical note: These rates of pay were specifically negotiated from a change in yearly scheduled hours from (2400 to 2080) and reflect a conversion of equitable value based on a previous yearly work schedule.

Section 9. On-Call for Strategic Program Coordinators in Disaster Management.

Strategic Program Coordinators in the Disaster Management Department designated in writing to be on-call shall receive one (1) hour of pay at the regular rate of pay for each eight (8) hours on-call. If called back to work, they shall be paid at the rate of one and one-half times (1.5) their regular rate of pay, with a two (2) hour minimum. Employees assigned to be on-call must be readily available to report to duty within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time.

Section 10. Strategic Program Coordinators in Disaster Management Work Hours.

Bargaining unit employees working full-time within classifications under the direction of the Disaster Management Department work a regular schedule of either five (5) days a week with eight (8) hours shifts or four (4) days a week with ten (10) hour shifts at the discretion of the Department Director.

Full time employees earn overtime consistent with Article 13. Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

Section 11. District Attorney Investigators Work Hours.

Bargaining unit employees working full time within classifications under the direction of the District Attorney's Office work a regular schedule of either five (5) days a week with

eight (8) hour shifts or four (4) days a week with ten (10) hour shifts, at the discretion of the District Attorney.

Bargaining unit employees working part-time within classifications under the direction of the District Attorney's Office work a regular schedule of two (2) or three (3) days a week with ten (10) hour shifts, at the discretion of the District Attorney. Part-time employees may alternatively be assigned a regular work schedule of four (4) or five (5) days a week with no more than ten (10) hour shifts on any particular day, for total regularly scheduled work week hours not to exceed thirty (30) hours, at the discretion of the District Attorney.

Full-time employees earn overtime consistent with Article 13 and double time consistent with Article 15.5(b). Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

ARTICLE 39 – EMPLOYEE ASSISTANCE PROGRAM/EAP

The Sheriff or designee may, with cause, order any employee to consult with the Employee Assistance Program (EAP) counselor as necessary. The results of the consultation shall remain confidential except that the EAP will contact a Human Resources Integrated Disability Analyst to confirm the employee's consultation. The appointments will be on compensable time.

ARTICLE 40 - TRANSFERS

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of the Request to Voluntarily Transfer.

ARTICLE 41 – TERMINATION

Section 1.

Except as otherwise provided, this agreement shall become effective as of the date it has been ratified by both the County Board and the Association membership and shall remain in full force and effect until the 30th day of June, 2023 and until a subsequent contract is negotiated and executed by the County and Association. This Agreement shall automatically reopen on March 1, 2023 for negotiations.

Section 2.

This Agreement may be amended at any time by mutual agreement of the Association and County; such amendments shall be in writing and signed by both parties.

IN WITNESS THEREOF, the parties hereto set their hands thus _____ day
of _____, 2021.

FOR THE UNION:

FOR THE COUNTY:

Stephen Steinberg
President, CCPOA

Tootie Smith
BCC Chair

Anil Karia
Attorney

Recording Secretary

Angie Brandenburg
Sheriff

Michael Copenhaver
Undersheriff

Jenna Morrison
Chief Deputy

Lee Eby
Captain

Jeff Smith
Lieutenant

Eric Sarha
HR Deputy Director

APPENDIX A
CLACKAMAS COUNTY SHERIFF'S OFFICE REQUEST
TO VOLUNTARILY TRANSFER

NAME:	(LAST)	(FIRST)	(MI)
EMPLOYEE ID:			
CURRENT CLASSIFICATION:	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		
REQUESTED CLASSIFICATION:	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of this Request to Voluntarily Transfer.

In order for this request to be considered, the employee must meet the following requirements:

- Completed 18 months as a Jail Deputy (121) or Deputy Sheriff (103) level.
- Current (within the preceding 12 months) Sheriff's Office performance appraisal on file which rates employees' performance as meets or exceeds standards in all areas. Please attach performance appraisal to this request.
- No disciplinary action on file with the last 24 months.

If my request to voluntarily transfer is approved, I understand that my employment status will change in the following ways:

- While in training and performing work described in the Recruit classification indicated above, I will be placed into the Recruit classification identified as Deputy Sheriff, Recruit or Jail Deputy, Recruit Employees will maintain their current pay and merit step schedule from transfer.
- My training (DPSST/FTEP/Other training requirements) will be completed within 12 months unless extended by Division Commander.
- If moving from Deputy Sheriff, to Jail my new position will be a Jail Recruit maintaining my current pay.
- If moving from Jail to Deputy Sheriff, my new position will a Deputy Sheriff Recruit maintaining my current pay.
- My seniority will be determined in accordance with the POA Collective Bargaining Agreement (by classification in the new position).

- While in training, during my probationary period of 365 days, I may make a good faith request to be reappointed to my previous classification for reasons other than misconduct or discredit on my employment record. I will be returned to a vacant position in my former classification at my previous Step.

If, while in training during my probationary period of 365 days, the Sheriff or designee determines my performance is not meeting established standards, I will be returned to a vacant position in my former classification at my previous Step.

Employee	Date
Supervisor	Date
Undersheriff	Date

If request is approved by Sheriff's Office management, please attach completed Personnel Action Form and submit packet to Human Resources.

ADDENDUM 1 – DRUG AND ALCOHOL TESTING POLICY

**Clackamas County Sheriff's Office
Peace Officers Association Employees**

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5.31 DRUG AND ALCOHOL POLICY

Clackamas County Sheriff's Office

5.31.1 POLICY STATEMENT

The Clackamas County Sheriff's Office (CCSO) is strongly committed to providing a safe and drug-free workplace.

The CCSO recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome an alcohol or drug dependency problem (see "Employee Assistance Program and Self-Referral").

The Drug and Alcohol Testing Policy is intended to be consistent with and enhance the Clackamas County Employment Policy and Practice #5 - Drug Free Workplace Act and Policy Proclamation.

5.31.2 EDUCATION AND TRAINING

The CCSO will distribute information to employees regarding the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; drug and/or alcohol counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

At the time of hire, new employees will receive a copy of the Drug and Alcohol Policy, which informs them of their responsibilities with respect to compliance with this Policy.

Persons who may be required to make "reasonable suspicion" recommendations or determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes each for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase proficiency.

5.31.3 EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL

Any employee may voluntarily request assistance in dealing with a personal drug and/or alcohol problem through the Employee Assistance Program (EAP) or other acceptable treatment program. Utilization of the EAP is confidential and an employee's utilization of the EAP will not be made known to the Sheriff's Office or the County unless the employee voluntarily chooses to share that information. However, voluntary self-referral for alcohol and/or illegal drug use is not in itself a "safe haven." The guidelines listed below will apply to self-referrals.

- A. Any employee not currently under personnel investigation who voluntarily requests assistance in dealing with a personal alcohol and/or drug problem, may do so without jeopardizing his or her employment, if the alcohol and/or drug of abuse was originally prescribed to, or legally obtained by the employee, but was later abused by the employee. For the purpose of this section, a personnel investigation commences when the Sheriff's Office begins collecting information that leads to the employee being instructed to report for drug and/or alcohol testing.

- B. Participation in the EAP or other acceptable treatment program will not, in itself, jeopardize an employee's job, and successful treatment will be viewed positively. However, participation in the EAP or treatment program will not prevent the CCSO from imposing discipline for conduct that occurs in conjunction with alcohol and/or drug use in violation of Sheriff's Office Policy, and will not relieve an employee from the responsibility to perform assigned duties safely and at a satisfactory performance level.

5.31.4 DRUG EVALUATION; LEAVE OF ABSENCE

An employee may be required to undergo an evaluation by a Substance Abuse Professional (SAP) approved by the Sheriff's Office if he or she is involved in an alcohol and/or drug related incident on or off-duty. This evaluation will determine the extent of any alcohol and/or drug problem and the appropriate treatment. The employee may then be required to participate in, and successfully complete, an alcohol and/or drug education and treatment program as recommended by the SAP in lieu of disciplinary action, as set forth in a Last Chance Agreement. Any cost of such an evaluation not covered by the employee's medical insurance shall be paid by the Sheriff's Office. The cost of the substance abuse treatment will be the responsibility of the employee if not covered by the employee's insurance. Substance abuse evaluation and treatment will be in addition to any disciplinary action taken.

Absences due to alcohol and/or drug abuse evaluation or treatment may be covered by an employee's sick leave or vacation leave. If no such paid leave is available, an unpaid leave of absence may be used according to the County's regular Policy for unpaid leave of absence.

Return to duty, after an employee has been on leave required by this Policy for evaluation or treatment of an alcohol and/or drug problem, will be allowed only in compliance with the recommendations of the SAP.

5.31.5 PRESCRIPTION AND OVER-THE COUNTER MEDICATIONS

Prescription and over-the-counter medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Employees are prohibited from reporting to work, working or returning to duty with medications that could reasonably be expected to impair their ability to safely perform their job duties. Employees are also prohibited from reporting to work with medications containing controlled substances in accordance with section 5.31.6. Employees should ask their physicians for specific instructions as to how much medication they should take, what combinations of medications they should take and when they should take medications to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Employees must report the use of medically prescribed drugs or other substances which could reasonably be expected to impair job performance. It is the employee's responsibility to determine from their physician whether the prescribed drug could reasonably be expected to impair his or her job performance, including the ability to operate a motor vehicle. An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication(s) with his/her doctor in relation to job duties; the type of medication(s); beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with Sheriff's Office management will then determine whether to

require written medical authorization to work from a prescribing health care practitioner or if any other actions are necessary.

Management will restrict access to medical information to the DER, the Sheriff, Undersheriff or person appointed to fulfill the duties of the Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto County property/premises, including vehicles must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

“Medical and Recreational Marijuana”

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor and certain conditions have been met and for limited recreational use, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card or recreational use that complies with state law.

In addition, possession of marijuana on County property is grounds for discipline up to and including dismissal.

5.31.6 PROHIBITIONS

The following conduct is prohibited:

- A. Buying, selling, consuming, distributing or possessing unlawful drugs or alcohol while working or engaged in work activities on behalf of the County, or while on County premises or in County vehicles, except as necessary in the performance of duties (undercover operations, confiscated evidence, etc.)
- B. Reporting for work, working or returning to duty with drugs or alcohol present in the body at the levels set forth below. For the purpose of this Policy, “drugs” include all controlled substances regulated under the federal Controlled Substances Act.
- C. Failing to promptly report arrests, convictions and/or plea-bargains for an alcohol or drug-related criminal offense to the Undersheriff or his/her designee, irrespective of the jurisdiction where such action was taken.
- D. Refusal by an employee to submit a urine specimen and/or breath alcohol sample when required by this Policy will have the same consequences as a positive drug and/or alcohol test result (see “Discipline” section). It will warrant immediate removal of the employee from duty.

- E. Failing to comply with directives regarding enforcement of this Policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered samples; obstructing the testing process and failing to comply with rehabilitation conditions imposed by the County or rehabilitation counselors pursuant to this Policy.
- F. Engaging in any other violation of this Policy.

Positive Test Levels for Drugs and Alcohol

A positive drug test result is defined as the detection of any one or more of the substances and/or metabolites of the substance at levels set forth by the DOT¹ at the time of testing, which are currently shown below:

Substance or Class	Screen Cut-off	Confirmation Cut-off
Amphetamines	500 ng/mL	250 ng/mL
Benzodiazepines	200 ng/mL	200 ng/mL
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Methadone	300 ng/mL	200 ng/mL
Codeine/Morphine	2000 ng/mL	2000 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL	100 ng/mL
Oxycodone/Oxymorphone	100 ng/mL	100 ng/mL
6 Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
PCP	25 ng/mL	25 ng/mL

**** Limit of Quantity**

An employee will be considered in violation of prohibitions against reporting to work or working with alcohol in his/her system if his/her breath tests .01 g/210L or higher. A separate test, as provided by 5.31.10 Breath Alcohol Testing B2, must be conducted to enforce the .01 or greater BAC standard.

It is not the intent of this Policy to test for medications that are lawfully prescribed by a healthcare provider and used in accordance with the prescription. Employees who are taking medications, including medications containing controlled substances, should refer to the “Medications” section above for an explanation of their obligations. See 5.31.5.

Employees who engage in any prohibited conduct may be subject to discipline, including discharge.

5.31.7 CALLBACK DUTY

It is recognized that employees may be recalled to duty during normal off duty hours. When operational need dictates the necessity to recall these employees, caution and good judgment must be exercised. The employee is required to notify the supervisor requesting the callback of the side effects of any prescription drug or over-the-counter medication and, if requested, the name of the

¹ <https://www.transportation.gov/odapc/part40/40-87>

medication, as well as that could impair his/her ability to safely perform job duties and to receive the supervisor's approval before responding to the callback. Similarly, employees who have consumed alcoholic beverages within four (4) hours of a requested callback or, for any reason, believe they could be impaired by the consumption of alcohol, are required to notify the supervisor and obtain approval before responding to the callback.

5.31.8 TYPES OF DRUG AND ALCOHOL TESTING REQUIRED

The following are occasions for drug and alcohol testing under this Policy:

Reasonable Suspicion Testing

An employee may be required to submit to a drug and/or alcohol test upon reasonable suspicion that the employee has violated the prohibitions of this Policy concerning alcohol and/or controlled substances. The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee's condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Poor attendance or tardiness alone or in combination do not constitute reasonable suspicion. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that supports the violation of Policy prohibitions.

The "reasonable suspicion" behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the drug and/or alcohol test may rely on the observation and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any "reasonable suspicion" incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. A negative dilute result is unsatisfactory on a reasonable suspicion test for drugs. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail. However, employees remain subject to discipline up to and including discharge, for giving intentionally altered samples.

Employees will have access to union representation if requested at every step of the "reasonable suspicion" testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

Return to Duty and Follow-up Testing

Unless the employee is discharged, CCSO shall require return to duty and follow-up testing as recommended by the SAP when an employee has engaged in prohibited drug or alcohol-related behavior or violation of the prescription medication provisions of this Policy. A negative alcohol or drug test is required prior to return to duty and at least six (6) unannounced follow-up tests are required during the twelve (12) months following return to duty. Any recommendations by the SAP shall be followed, but follow-up testing may continue for no longer than sixty months following return to duty.

Please refer to “Return to Duty Procedures” and “Disciplinary Action and Procedures” for additional information.

5.31.9 COSTS OF TESTING

The County will be responsible for payment of all reasonable suspicion, return to duty, and follow-up tests that are required by the County.

The employee will be responsible for payment of any requested split tests or other tests that he/she voluntarily undergoes without being required to do so by the County. The County will initially pay for the test and then collect reimbursement from the employee.

5.31.10 DRUG AND ALCOHOL TESTING PROCEDURES

Testing procedures for all employees are governed by the same standards as apply to commercial driver license holders under federal law, with the exception of forms required by the United States Department of Transportation (DOT) for CDL drivers. These standards include, but are not limited to, those governing sample acquisition, the chain of custody, laboratory selection, testing methods and procedures, and verification of test results.

Drug Testing:

- A. Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- B. If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test as outlined in 49 CFR 40.193.
- C. Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.
- D. When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Prohibited Conduct”).

Breath Alcohol Testing:

- A. Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- B. A positive test will be confirmed as follows:
 - 1. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
 - 2. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted as described in 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- C. If the result of the confirmed breath alcohol test is positive, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the Designated Employer Representative.
- D. Under this Policy, an employee with a confirmed positive breath alcohol test at the levels set forth in the “Prohibited Conduct” section of this Policy shall be considered to be in violation of this Policy.

5.31.11 DRUG TEST RESULTS REVIEW

Drug test results on an employee which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO. A confirmed positive test does not automatically identify an employee as having used drugs in violation of this Policy. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the DER.

Medical Review Officer Reporting Options and Employer Actions

- “Negative” – self-explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test”.
- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for reasonable suspicion,

return to duty or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.

- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., reasonable suspicion, return to duty or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test as outlined in this Policy.
 - Immediately remove employee from duty; and
 - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
 - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

MRO Verification Without Notifying the Employee

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive, adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO; and
- The MRO has successfully made and documented a contact with the employee and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the entire test.

Communication of Results

The MRO or his/her designated representative will report test results ONLY to the County’s DER who shall notify either the Sheriff, Undersheriff or person appointed to fulfill the duties of Sheriff

or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance and other information, as necessary for the County to determine whether the employee has violated this Policy.

Employees may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

This policy shall not limit either the County or the Association from obtaining and sharing information, as they deem necessary, to respond to grievances and other legal actions or disclose information and documents, as compelled by law.

5.31.12 DISCIPLINARY ACTION

A. Any employee found to be in violation of this Drug and Alcohol Policy will be placed on administrative leave pending the results of testing and/or investigation, and is subject to discipline, up to and including discharge. Violations of this Policy may differ in terms of seriousness, the employee's prior record of violation and/or compliance and other factors consistent with "just cause" obligations. Employees may result in:

- Verbal and written reprimands
- Suspension or demotion
- Termination of employment
- Last chance agreements in lieu of termination

The CCSO may also initiate a criminal investigation and prosecute.

B. Employees who have voluntarily requested assistance concerning drug and/or alcohol problems and/or voluntarily entered into drug or alcohol evaluation and treatment programs shall have their actions taken into consideration as set forth in section 5.31.3.

C. Positive Alcohol or Drug Test. Positive alcohol and drug tests are considered a serious infraction and will generally subject an employee to discharge or last chance agreement.

D. Misuse or Other Medication Violations. An employee who has tested positive for the presence of drugs which were originally legally prescribed but may have been abused by the employee may be referred to an employee assistance program or SAP for drug counseling or treatment. As an alternative to dismissal and at the discretion of the Sheriff, the employee may be subjected to a last chance agreement as a condition of continued employment, which shall include a requirement that the employee submit to unannounced drug testing if recommended by a SAP, for a period of time recommended by the SAP. The last chance agreement will also include authorization for the County to receive information necessary to assure compliance with the last chance agreement and assure future compliance with this Policy. If the employee violates the terms of treatment or rehabilitation, again tests positive or otherwise violates the last chance agreement during such period, he/she may be discharged, following fulfillment of any Loudermill due process obligations and as otherwise provided in the Last Chance Agreement.

If the level of discipline allows an employee to return to duty, he/she must agree to the following conditions:

- Meet all recommendations/requirements of the SAP.
- In the event the SAP does not specify any follow up testing, employee shall undergo up to six (6) periodic, but unannounced, drug and/or alcohol tests at the discretion of the DER within one (1) year of returning to duty.
- Any confirmed positive alcohol or verified positive prescription drug abuse result while the employee is undergoing required return to duty or follow-up treatment and/or testing shall result in termination.

5.31.13 RETURN TO DUTY PROCEDURES

Employees who have violated this Policy may only return to duty if the level of discipline allows it and the County has determined them eligible. The following statements reflect the return to duty and follow-up testing requirements of this Policy:

- A. Employees who have had a confirmed positive alcohol test or have abused prescription drugs must be evaluated, undergo treatment, if required, and be determined fit for return to work by the Substance Abuse Professional.
- B. Employees may be subject to periodic unannounced follow-up testing as determined by the Substance Abuse Professional who evaluated the employee. If the employee was found to need assistance in resolving his/her substance misuse problem, a minimum of six (6) such follow-up tests must be conducted during the twelve (12) months following the employee's return to duty.

5.31.14 RECORD KEEPING PROCEDURES

- A. The County's DER will maintain alcohol/drug testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.
- B. An employee is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER, SAP, or to the County drug testing management service.
- C. Information regarding an individual's alcohol/drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:
 - 1. Such information may be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel when legally required.
 - 2. Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from an alcohol test and/ or a drug test.

3. When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
 4. The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.
- D. The County shall release information regarding an employee's records to a subsequent employer upon receipt of a specific written request from the employee authorizing release of the records to an identified person.
- E. Record Retention.

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

Negative and canceled drug test records; alcohol test results less than 0.01 g/210L	1 year
Records of supervisor training	Indefinite or 2 years beyond job responsibilities
Records of verified positive alcohol/drug test results; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules	5 years

5.31.15 INFORMATIONAL RESOURCES

Information on this Policy and associated procedures is available by contacting the DER as outlined on the Intranet at:

<http://web1.clackamas.us/des/drugtesting.html>

Questions may also be addressed directly to the County's drug testing management service.

5.31.16 COMMERCIAL DRIVERS LICENSE DUTIES

Employees performing jobs requiring a commercial drivers' license will also be required to comply with the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations, (see separate Policy for DOT drivers).

ATTACHMENT A – DEFINITION OF TERMS

For the purposes of this Policy, the following definitions apply.

Abuse/Misuse of Prescription Drugs: The use of a drug not in accordance with the prescribed dosage or method of use.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol: Ethyl alcohol or ethanol.

Alcohol Screening Device (ASD): A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Breath Alcohol Technician (BAT): An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

Breath Alcohol Testing Site: A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

CCSO: Clackamas County Sheriff's Office

CFR: United States Code of Federal Regulations

Chain of Custody: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

Collection Site: A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collector: A person who instructs and assists applicants and employees through the urine specimen collection process.

Confirmation Test: A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

Controlled Substances: Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

County: Clackamas County and/or Clackamas County Sheriff's Office

Designated Employer Representative (DER): An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this Policy.

Dilute Specimen: A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: Controlled Substances.

FHWA: Federal Highway Administration

FMCSA: Federal Motor Carrier Safety Administration

Initial or Screening Test: An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer (MRO): A licensed Doctor of Medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

Negative Drug Test: A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee's or applicant's system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

On Duty: Under this Policy, an employee is "on duty" when he/she is at work and ready to perform employment functions.

Positive Drug Test: A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by this Policy.

Confirmed Positive Drug Test: A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

Verified Positive Drug Test: A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

Prohibited Drugs: Marijuana, Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, Benzodiazepines, Methadone, 6 Acetylmorphine (Heroin). (see Urine 8 Drug Panel)

Reasonable Suspicion: (5.31.8) The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use.

Refusal to Submit: Refusal by an individual to provide a urine specimen after receiving notice of the requirement to be tested in accordance with this Policy.

Safety Sensitive Positions: All sworn law enforcement positions, all positions regularly stationed at the Jail, and medical examiners.

SAMHSA: Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

Screening or Initial Test: Immunoassay screen to eliminate “negative” urine specimens from further consideration.

Split Specimen Collection Procedure: A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

Split Test: If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

Substance Abuse Professional (SAP): Under DOT regulations, individuals who may serve as substance abuse professionals include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

ATTACHMENT B

The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:

DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE

The County will maintain an agreement with a drug and alcohol testing management service to advise the County on processes, developments, and changes concerning this Policy.

The firm chosen will be responsible for overseeing compliance of agents of the County with applicable federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and (MROs). It also submits blind specimens on behalf of the County, and maintains records as required by applicable federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

MEDICAL REVIEW OFFICERS

MRO services will be provided by the testing management service.

DRUG TESTING LABORATORIES

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

SUBSTANCE ABUSE PROFESSIONALS

Under this Policy, employees who refuse testing, have confirmed positive alcohol test results, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to employees as needed.

ATTACHMENT C – LAST CHANCE AGREEMENT -- EXAMPLE

[This attachment is an example of a last chance agreement form that may be used. The form may vary to fit the facts and circumstances of a particular situation.]

This is an agreement between [employee's name] (the Employee); the Clackamas County Sheriff's Office and Clackamas County (the Sheriff), and the Clackamas County Peace Officers' Association (the Association).

1. This agreement serves as notice to the Employee as to what to expect for continued employment with the Sheriff. This agreement does not guarantee employment for any specific period.
2. The Employee agrees to continue in a bona fide drug and/or alcohol [tailor to each case] outpatient rehabilitation program recommended and approved by a qualified substance abuse counselor (the Counselor). The Employee fully understands that s/he is to remain in such a program, including any required aftercare, until released in writing by the Counselor. For [period of time] from the date of this agreement, the Sheriff shall have the right to conduct random breath alcohol or urinalysis testing of [employee's name] on work time at the expense of the Sheriff. Should the employee refuse to cooperate with said breath alcohol or urinalysis, or test positive for alcohol/drugs or abuse prescription medication while on the job, s/he shall be subject to termination under the Association contract. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
3. The Employee agrees to grant permission to the Counselor to release verification to the County that the Employee is meeting and has completed the requirements of the program and any required aftercare. If the Employee discontinues the program without the consent of the Counselor or is terminated from the program by the counselor, s/he will be considered in violation of the last chance agreement. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
4. The Employee agrees that this last chance agreement constitutes a final warning and that any violation or non-compliance with its terms within [x] years, shall be considered just cause for discharge and shall result in loss of employment. In the event the termination is grieved and submitted to arbitration, the arbitrator's authority will be limited to determining whether there was or was not a violation of the Last Chance Agreement. In the event the arbitrator finds there was a violation of the Agreement, that violation will automatically be considered "just cause" for termination. The parties agree to enter into a factual stipulation so limiting the scope of the issue and the arbitrator's authority.
5. Except as stated in this agreement, the terms and conditions of the Employee's work shall be the same as all other employees in the Association bargaining unit.
6. The Association and the employee agree that this resolution is in lieu of termination [and in addition to specified discipline] of [employee's name] and that the agreement resolves all disputes related to proposed discipline. The Employee and the Association agree not to challenge this agreement as proper under just cause or any other provision of the collective bargaining agreement or any other legal challenges in any forum.

7. This is the complete agreement between the parties who sign in knowingly and of their own free will, after seeking advice of counsel.
8. The contents of this agreement related to the employee's involvement in alcohol/drug treatment and testing and placement on a "last chance agreement" shall be maintained in confidence and strictly on a "need to know" basis by the parties. Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel, unless legally required.
9. This agreement does not set future precedent between the Sheriff and the Association and shall not be used as evidence of waiver of rights by the Association or the Sheriff in any future disputes between the parties.

_____	_____
[Employee's name]	Date
_____	_____
Clackamas County Peace Officers Association	Date
_____	_____
Clackamas County	Date

ADDENDUM 2 – DOT DRUG AND ALCOHOL TESTING POLICY

**Clackamas County Sheriff’s Office
Employees covered by US DOT Regulations**

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DRUG AND ALCOHOL TESTING POLICY

Clackamas County Sheriff's Office Employees covered by US DOT Regulations

POLICY STATEMENT

The Clackamas County Sheriff's Office (CCSO or "the County") is strongly committed to providing a safe, drug-free workplace. In addition, an employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, the CCSO has implemented a substance abuse testing Policy which applies to all applicants for, and employees who hold "covered driver" positions.

The Sheriff's Office recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome a drug dependency problem (see "Employee Assistance Program and Self-Referral").

This Drug and Alcohol Testing Policy ("Policy") is intended to comply with DOT regulations, changes which will supersede specific Policy provisions. To view revisions to this Policy made by the Federal Motor Carrier Safety Administration (FMSCA) or the Federal Highway Administration (FHWA) since this publication, and additional information, go to: <http://web1.clackamas.us/des/drugtesting.html>

EFFECTIVE DATE: February 1, 2011 **POLICY REVISED:** September 2020

WHO WILL BE TESTED AND WHEN

Covered drivers are defined as those who are required to hold commercial driver's licenses for their jobs. Such applicants and employees fall under the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations ("Controlled Substances and Alcohol Use and Testing," 49 CFR Part 382). Generally, covered drivers are operators of commercial motor vehicles which 1) are greater than 26,000 pounds GVWR, 2) carry hazardous materials in placardable quantities, or 3) carry 16 or more passengers, including the driver.

Covered drivers may be tested for drugs or alcohol whenever they are on duty.

For the purposes of this Policy, "on duty" is defined as any time an individual is on the job and ready to perform safety-sensitive functions. Performing a safety-sensitive function means any period in which the driver is actually operating, preparing to operate, or immediately available to operate a vehicle requiring a Commercial Driver License. Time spent in association with drug testing specimen collection and/or alcohol testing shall be considered "on-duty" time.

EDUCATION AND TRAINING

The CCSO will distribute information to employees on the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; and drug counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

When deputies are assigned duties that involve driving vehicles requiring a Commercial Driver License (CDL) they will receive specific information regarding the CCSO's Drug and Alcohol Testing Policy and be informed of their responsibilities with respect to compliance with federal drug and alcohol testing regulations.

Employees (see 5.31.8) who may be required to make "reasonable suspicion" determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes EACH for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase supervisory proficiency.

EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL

When a covered driver voluntarily reports a drug/alcohol problem BEFORE it is discovered through a drug or alcohol test, he/she will immediately be removed from driving duties.

Under the County's independent authority, employee assistance for self-referral will be handled as described in the Sheriff's Office Drug and Alcohol Policy.

PRESCRIPTION MEDICATIONS

Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Covered drivers should ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Under the County's independent authority, all covered drivers are specifically required to notify their immediate supervisors when they are taking medications associated with warning labels (for example, relating to the operation of vehicles, heavy equipment, or machinery). An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication with his/her doctor in relation to job duties; the type of medication; beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with CCSO Management will then determine whether to require written medical authorization to work from a prescribing health care practitioner or if any accommodations are necessary.

The County will restrict access to medical information to the DER, the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto the CCSO property/premises must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

“Medical Marijuana”

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card.

In addition, possession of marijuana on county property is grounds for dismissal.

PROHIBITIONS

FMCSA REGULATIONS SPECIFY the following prohibitions:

- 1) Covered drivers must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- 2) Covered drivers are prohibited from possessing alcohol while on duty; from using alcohol while on duty; and from having alcohol present in their systems at a level of 0.02 g/210 L² or greater while on duty. Those with levels of 0.02 or greater as demonstrated by alcohol testing are subject to immediate removal from duty for a minimum of 24 hours (see also “Discipline”)
- 3) Covered drivers are prohibited from using alcohol after an on-the-job accident until:
 - a. The DER or his/her designated alternate has determined that alcohol testing is not required, OR
 - b. An alcohol test has been completed, OR
 - c. Eight (8) hours have passed since the accident.
- 4) Covered drivers must not show evidence of the use of controlled substances without a valid prescription.

² Breath testing results are given in grams of alcohol per 210 liters of breath (g/210L)

- 5) Refusal by a covered driver to submit a urine, saliva or breath specimen when required by federal regulations will have the same consequences as a positive drug test result, or a breath alcohol test result of 0.04 or greater (see “Discipline” section), and result in the immediate removal of the employee from duty. In addition, refusal of a test after a fatal accident may result in more severe penalties under Federal law.

INVESTIGATION OF PREVIOUS TESTING

As a condition of employment, applicants for covered driver positions or current employees being assigned covered driving duties will be required to provide written consent for the CCSO to obtain the following information from DOT regulated employers who have employed the applicant during any period during the three (3) years preceding the date of application or transfer:

- Names and addresses of previous DOT covered employers;
- Alcohol tests with a result of 0.04 or greater;
- Verified positive drug tests;
- Refusal to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- If the applicant violated a DOT drug and alcohol regulation, documentation of the applicant’s successful completion of DOT return to duty requirements. (Note: If the previous employer does not have information about the return to duty requirements, the CCSO must seek to obtain this information from the applicant.)

The County must ask the applicant or employee being assigned covered driving duties whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which they applied for, but did not attain, a DOT-regulated safety-sensitive transportation position during the three (3) years preceding date of application. (If they admit that he/she had a positive test or refusal to test, they must document successful completion of the return to duty process.)

TYPES OF DRUG AND ALCOHOL TESTING REQUIRED

The following are occasions for drug and alcohol testing under this Policy:

Pre-employment Testing

Pre-employment drug testing is required for all covered driver positions. Applicants and/or current employees being assigned covered driving duties will be notified that drug testing is a requirement of the application process.

Under the County’s independent authority, and as permitted by the DOT, a negative dilute result is unsatisfactory on a pre-employment test. Applicants and/or current employees being assigned covered driving duties will be given one additional opportunity to provide

a valid specimen. The result of the second test will determine whether the person is eligible for employment as a covered driver.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant and/or current employee being assigned covered driving duties for the covered driver position.

Random Testing

Definition of Random Test. A random test is a test that is unannounced, and where every person in the random selection “pool” has an equal chance of being selected for testing each time a selection occurs. Random testing is considered to be an effective deterrent to substance abuse. Covered drivers are required to be randomly tested under DOT regulations.

Method of Random Selection: The County has contracted with an outside drug testing management service to perform computerized random selections on its covered employees. Selections occur monthly on a randomly selected date. Selections are therefore spread reasonably throughout each 12-month period.

A number of drug tests equal to at least 50% of the number of individuals in the program will be completed annually, as required by DOT drug testing regulations; a number of alcohol tests will be completed annually, as required by current DOT regulations.

Procedure for Notification and Specimen Collection/Testing:

- 1) The drug testing management service will maintain a secure data base of individuals covered by the Federal Highway Administration’s drug and alcohol testing regulations.
- 2) On a randomly selected date, the service will transmit a list of individuals who have been selected for testing to the DER.
- 3) The DER or his/her designated representative will notify the individual in person or by telephone that he/she has been selected to provide a urine and/or breath specimen for testing. The date and time of notification will be recorded on the employee instruction card.
- 4) IMMEDIATELY after being notified, each individual selected for testing must proceed to a specimen collection and/or alcohol testing facility. If the individual is in a remote location, the DER will arrange for him/her to go to a local clinical facility so that specimen collection and/or breath testing are completed expeditiously.

Reasonable Suspicion Testing

“Reasonable suspicion” means that an individual has given a supervisor or other responsible manager reason to believe that he/she may be impaired, intoxicated, or under the influence of a controlled substance or alcohol.

A reasonable suspicion test will be required under the following conditions:

- 1) The CCSO shall require a driver to submit to an alcohol test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning alcohol. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
- 2) The CCSO shall require a driver to submit to a controlled substances test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning controlled substances. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The “reasonable suspicion” behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the test may rely on the observation of and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any “reasonable suspicion” incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. UNDER THE COUNTY’S OWN AUTHORITY, and as permitted by the DOT, a negative dilute result is unsatisfactory on a reasonable suspicion test. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail.

Employees will have access to union representation if requested at every step of the “reasonable suspicion” testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This

representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

Post-Accident Testing

A *reportable accident* under Federal Highway Administration regulations is defined as an accident in which a covered driver was operating a commercial motor vehicle and in which:

- 1) A fatality occurred; or
- 2) The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; or
- 3) The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

UNDER FMCSA REGULATIONS, employees involved in a reportable accident are required to be:

- Tested for alcohol as soon as possible, but in no case later than 8 hours after the incident.
- Drug tested as soon as possible, but in no case later than 32 hours after the incident.

The CCSO will ensure that the employee involved in a *reportable accident* will be immediately removed from duty, and escorted to a collection/testing site. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established testing procedures. A list of qualified union representatives will be provided to the County.

An employee who is seriously injured and cannot provide a specimen for testing may be requested to authorize the release of relevant hospital reports and other documentation that would indicate whether there were any controlled substance(s) in his/her system at the time of the incident.

The CCSO will provide its covered drivers with any necessary information and procedures to enable them to meet federal requirements for post-accident testing.

Covered drivers are prohibited from using alcohol for eight (8) hours following an accident/crash or until they have undergone a post-accident alcohol test, whichever occurs first.

An alcohol test should be administered within two (2) hours following the accident/ crash, but no later than eight hours.

A drug test should be administered as soon as possible but no later than thirty-two (32) hours after the occurrence of an accident/crash.

Return to Duty and Follow-up Testing

FMCSA regulations require return to duty and follow-up drug and/or alcohol testing when a covered driver has engaged in prohibited drug or alcohol-related behavior. A negative drug and/or alcohol test is required prior to return to duty. Follow-up testing may continue for no longer than sixty months following return to duty. The CCSO will comply with any mandated testing requirements outlined by the SAP.

Please refer to “Return to Duty Procedures “and” Disciplinary Action and Procedures” for additional information.

Costs of Testing

The County will be responsible for payment of all pre-employment, pre-duty, post-accident, random, and reasonable suspicion tests.

The County will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a negative or canceled test result.

The employee will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a positive result. The County will pay for the test and then collect from the employee.

DRUG AND ALCOHOL TESTING PROCEDURES

Drug Testing

- 1) Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures specified by DOT regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- 2) If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test per 49 CFR 40.193.
- 3) Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.

- 4) When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review”).

Breath Alcohol Testing

- 1) Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- 2) Breath alcohol tests with results below 0.02 require no further action.
- 3) Tests with results of 0.02 or above will be confirmed as follows:
 - a. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
 - b. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted per 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- 4) If the result of the confirmed breath alcohol test is 0.02 or greater, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the DER.

DRUG TEST RESULTS REVIEW

Drug test results on a covered driver which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO.

A POSITIVE drug test result is defined as the detection of any one or more of the substances tested for under FMCSA drug and alcohol testing regulations at the levels set forth by the DOT³ at the time of testing.

³ <https://www.transportation.gov/odapc/part40/40-87>

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as having used drugs in violation of a DOT regulation. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

MRO Reporting Options and Employer Actions

- “Negative” – self explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test” under the regulations.
- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for pre-employment, return to duty, or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., pre-employment, return to duty, or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test under the regulations.
 - Immediately remove employee from safety-sensitive functions; and
 - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
 - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.

- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

MRO Verification Without Notifying the Employee

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO;
- The MRO has successfully made and documented a contact with the employee, and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the test.

Communication of Results

The MRO or his/her designated representative will report test results ONLY to the County’s Designated Employee representative who shall notify either the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance.

Employees and applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

FAILURE TO COOPERATE

Failure to cooperate with any aspect of this Policy, including but not limited to falsifying or attempting to falsify test results or specimens or refusing to cooperate in testing will subject the employee to progressive discipline, up to and including discharge. Any covered

driver who refuses to take a drug or alcohol test to comply with FMCSA regulations (49 CFR Part 382) will be immediately removed from duty as required by these federal regulations.

DISCIPLINARY ACTION AND PROCEDURES

- 1) An otherwise qualified applicant for a covered driver position whose drug test results are negative and who has documented satisfactory participation in a previous employer's drug and alcohol testing program, will be considered qualified for the position offered. Applicants with verified positive drug test results will be considered ineligible for the position.
- 2) Any covered driver found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty and will be subject to progressive discipline, up to and including discharge. Violations include:
 - a. Alcohol possession or use in violation of the prohibitions stated in this Policy (e.g. pre-duty, post-accident; see pages 6 and 7)
 - b. An alcohol test result of 0.04 or greater
 - c. A verified positive drug test result
 - d. Refusal to test or to cooperate
- 3) A covered driver determined to have evidence of alcohol in his/her system in the range of 0.02 – 0.039 will be subject to progressive discipline.
 - a. On any occasion in which a covered driver has a breath alcohol test result of 0.02 or greater, but less than 0.04, he/she will be immediately removed from work for a period of at least 24 hours. The employee may deduct this time away from work from any available paid time except sick leave, or choose leave of absence without pay. No further alcohol testing will be required prior to resuming work at the beginning of the next shift following the end of the 24-hour period. These occasions will be considered violations of this Policy, and will subject the employee to progressive discipline.
- 4) Covered drivers who have volunteered information concerning drug or alcohol problems and/or voluntarily entered into drug and/or alcohol evaluation and treatment programs shall not have that admission used against them in progressive disciplinary proceedings.
- 5) **ALCOHOL RESULT OF 0.04 OR ABOVE**
Under the County's independent authority, any covered driver who has had a **confirmed alcohol result of 0.04** or above shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

6) **POSITIVE DRUG TEST**

Under the County's independent authority, any covered driver who has had a verified positive drug test shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

RETURN TO DUTY PROCEDURES

The following statements reflect the return to duty and follow-up testing requirements of the FMCSA:

- 1) Covered drivers who have had alcohol test results of 0.04 or greater must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A "return to duty" alcohol test with a result less than 0.02 is required prior to resumption of safety-sensitive or covered driving functions.
- 2) Covered drivers who have had verified positive drug tests must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A negative "return to duty" drug test is required prior to resumption of safety-sensitive or covered driving functions.
- 3) Covered drivers may be subject to periodic unannounced follow-up alcohol and/or drug testing as determined by the SAP who evaluated the employee.

Under the County's independent authority covered drivers who have had alcohol test results of 0.04 or greater and/or a verified positive drug test and are awaiting recommendation for return to duty shall deduct this time away from work from any available paid time except sick leave (unless provided by law), or choose leave of absence without pay.

RECORD KEEPING PROCEDURES

The CCSO's DER will maintain drug/alcohol testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.

A driver is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER or to the County drug testing management service.

The County shall release information regarding a covered driver's records to a subsequent employer upon receipt of a specific written request, by the covered driver, authorizing release of the records to an identified person.

Information regarding an individual's drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:

- 1) Such information must be released to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its drivers.
- 2) Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered driver and arising from an alcohol test and/or a verified positive drug test or from the CCSO's determination that the driver engaged in conduct prohibited by FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, the CCSO will disclose information regarding post-accident alcohol and/or drug testing.

Under the County's independent authority,

- 4) Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel unless legally required.
- 5) When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
- 6) The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.

Record Retention

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

- Negative and canceled drug test records; records of alcohol test results less than 0.02 1 year
- Information obtained from previous employers 3 years
- Records of supervisor training Indefinite or 2 years beyond job responsibilities
- Records of verified positive drug test results; alcohol test results of 0.02 or greater; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules 5 years
- Documentation of EBT calibration; Custody Control Forms; Specimen collection/alcohol test records 2 years

- Calendar year record of total number of employees tested and the results of tests 5 years

SUPPLEMENT A – DEFINITION OF TERMS

For the purposes of this Policy, the following definitions apply.

Abuse/Misuse of Prescription Drugs: The use of a drug not in accordance with the prescribed dosage or method of use.

Accident:

Reportable accident (covered drivers): An accident involving a commercial motor vehicle in which:

- a. A fatality occurred; OR
- b. The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; OR
- c. The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol: Ethyl alcohol or ethanol.

Alcohol Screening Device (ASD): 49 CFR 40.3 – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Breath Alcohol Technician (BAT): An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

Breath Alcohol Testing Site: A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

CCSO: Clackamas County Sheriff's Office

CFR: United States Code of Federal Regulations

Chain of Custody: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of

the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

Collection Site: A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collector: A person who instructs and assists applicants and employees through the urine specimen collection process.

Confirmation Test: A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

Controlled Substances: Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

County: Clackamas County and/or Clackamas County Sheriff's Office

Covered Driver: Individual who is required to hold a Commercial Driver's License (CDL) for his/her job with the CCSO and who is subject to drug testing under Federal Highway Administration, Department of Transportation regulations (49 CFR Parts 40 and 382).

Designated Employer Representative (DER): An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

Dilute Specimen: 49 CFR 40.3 – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: Controlled Substances

FHWA: Federal Highway Administration

FMCSA: Federal Motor Carrier Safety Administration

GVWR: Gross Vehicular Weight Rating; size criterion for determining classification of a commercial motor vehicle under federal regulations.

Initial or Screening Test: An immunoassay screen to eliminate “negative” urine specimens from further consideration.

Medical Review Officer (MRO): A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

Negative Drug Test: A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee’s or applicant’s system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

On Duty: Under this Policy, a covered driver is “on duty” when he/she is at work and ready to perform safety-sensitive functions, e.g., qualified and available to drive a commercial motor vehicle.

Positive Drug Test: A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by 49CFR Part 40.

Confirmed Positive Drug Test: A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

Verified Positive Drug Test: A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

Prohibited Drugs: Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

Random Testing: Computerized random selection and testing for drugs in which each person in the computer data base has an equal chance of selection each time a selection occurs, in accordance with regulatory requirements.

Reasonable Suspicion: Specific, articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that support the violation of Policy prohibitions.

Refusal to Submit: Refusal by an individual to provide a urine or breath specimen after receiving notice of the requirement to be tested in accordance with this Policy.

Safety Sensitive Functions: Ready to perform, performing, or just finished performing, the following duties: waiting to be dispatched, inspecting equipment, driving, loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

SAMHSA: Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

Screening or Initial Test: Immunoassay screen to eliminate “negative” urine specimens from further consideration.

Split Specimen Collection Procedure: A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

Split Test: If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

Substance Abuse Professional (SAP): Under DOT regulations, individuals who may serve as SAPs include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

SUPPLEMENT B – SERVICE PROVIDERS

The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:

DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE

The County will maintain an agreement with a drug and alcohol testing management service(s) to advise the County on processes, developments, and changes concerning this Policy.

The firm(s) chosen will be responsible for overseeing compliance of agents of the CCSO with federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and MROs. It also performs random selections and maintains records as required by federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

MEDICAL REVIEW OFFICERS

MRO services will be provided by the testing management service.

DRUG TESTING LABORATORIES

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County's drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

SUBSTANCE ABUSE PROFESSIONALS

Under this Policy, covered employees who refuse testing, have alcohol test results of 0.01 BAC for Sheriff Office Policy (0.04 BAC for DOT policy) or greater, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to covered drivers as needed.

The County's drug testing management service will assist the County in locating SAPs in the driver's community upon request.

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Sitting/Acting as (if applicable)

Executive Session Worksheet

Presentation Date: 06/01/2021 **Approx. Time:** 8:00AM **Approx. Length:**

Executive Session Category: Collective Bargaining

Department: Human Resources

Presenters: Eric Sarha, Deputy Director of HR

Other Invitees: Sherryl Childers

ATTACHMENTS: County and POA 2020-2022 BLACKLINE

County Counsel Approval: _____

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact _Sherryl Childers_____ @ 503-655-8235__

AGREEMENT
Between
CLACKAMAS COUNTY, OREGON



And

Clackamas County
Peace Officers Association

PEACE OFFICERS
ASSOCIATION



Clackamas County

July 1, 2020 – June 30, 2023

~~2017-2020~~
~~2020-202~~
AGREEMENT
Between
~~Clackamas County, Oregon~~
And



~~Clackamas County~~
~~Peace Officers' Association~~

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AGREEMENT
between
CLACKAMAS COUNTY, OREGON
and
CLACKAMAS COUNTY PEACE OFFICERS ASSOCIATION

PREAMBLE

This Agreement is entered into by Clackamas County, Oregon hereinafter referred to as the County, and the Clackamas County Peace Officers Association, hereinafter referred to as the Association.

The parties agree as follows:

ARTICLE 1 – RECOGNITION

Section 1. The County recognizes the Association as the exclusive bargaining agent for the purpose of establishing wages, hours and other conditions of employment for all of the classified County employees in the Sheriff's Office, Investigators in the District Attorney's Office, and Deputy Medical Examiners and Strategic Program Coordinators in the Department of Disaster Management, working twenty or more hours per week.

The bargaining unit excludes supervisory employees including Lieutenants and those with higher rank, confidential, and unclassified including temporary or limited term duration employees.

Classified and unclassified positions are those as identified by County Code 2.05.

Section 2. When any bargaining unit classification not listed on the Wage Schedule is established, the County shall designate a pay rate for the position. In the event the Association does not agree that the rate is proper, the County will negotiate with the Association over the wage rate and any disagreement over the wage rate will be submitted to the impasse resolution consistent with ORS 243.698. In such case, the County is not precluded from filling the position at the posted wage rate; however, the County acknowledges the obligation to bargain and honor any interest arbitration award.

Section 3. Consistent with the PECBA requirements related to information requests, The the Association and themay request information from the Sheriff's Office agree to meet twice a year regarding the utilization of temporary employees, also known as unallocated positions, by the Sheriff's Office, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions. The meetings will be staffed by a representative from Human Resources. The meetings will take place within 10 working days of March 15 and September 15 each year. The purpose of the meetingswill be to assess the Sheriff's use of temporary employees, the duration of their assignments and whether or not the positions should be converted to part-time or full-time positions. The Sheriff's Office will respond to the Association's information request within a

reasonable time per PECBA requirements. Upon reasonable request by the Association, the Association and Sheriff's Office will meet at a mutually agreeable time to discuss the Sheriff's use of temporary employees, the duration of their assignments, and whether or not the positions should be converted to part-time or full-time positions.

ARTICLE 2 – PRESERVATION OF PUBLIC RIGHTS

Section 1. The Association recognizes that an area of responsibility must be reserved to the County if County government is to effectively serve the public. Therefore, the County shall have full and complete right to manage and direct its business and it is recognized that the following responsibilities of management are exclusively functions to be exercised by the County and are not subject to negotiations insofar as this right does not affect the meaning, interpretation or application of any other term of this Agreement.

1. The determination of the governmental services to be rendered to the citizens of Clackamas County, Oregon.
2. The determination of the County's financial, budgetary and accounting procedures.
3. The management and direction of the work force including, but not limited to, the right to determine the methods, processes and manner of performing work; the right to hire, promote, transfer within the same pay range and retain employees; the right to discipline or discharge for proper cause; the right to lay off for lack of funds; the right to establish or abolish positions or reorganize the departments or division; the right to determine schedules of work; the right to purchase, dispose and assign equipment or supplies; and the right to contract or subcontract any work.

Section 2. The County, in exercise of the above mentioned functions, will not discriminate against any employee because of his-their membership in the Association or in the exercise of rights protected by this contract, including the right to file grievances or to request Association representation.

Section 3. The County and the Association for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered by this Agreement, or any other subject matter except as provided in Article 3, Existing Conditions.

ARTICLE 3 – EXISTING CONDITIONS

Matters of employment relations, as defined by PECBA, including but not limited to, direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment that are not referred to or covered by other provisions of this Agreement shall be continued at not less than the level in effect at the time of the signing of this Agreement. Any changes in those existing employment relations during the term of the Agreement shall be negotiated with the Association in accordance with ORS 243.698.

ARTICLE 4 – HOURS OF WORK

Section 1. Regular Hours and Workday.

The regular hours of work each day shall be consecutive. The workday shall consist of current prevailing consecutive hours of work scheduled, provided that changes to shift starting times that are required for justifiable business reasons may be made at the time of regular semi-annual seniority shift-bid without bargaining the change with the Association. All employees shall be scheduled to work on a regular shift and each shift shall have a regular starting and quitting time except for emergency situations.

Motors and Canine Units:

The workday for Motor and Canine Units commences and ends upon arrival and departure from the County, except that the workday for Motor Units and Canine Units assigned to contract cities commences and ends upon arrival and departure from the contract city limits. When a Motor Unit employee agrees to work a voluntary overtime shift on days off for special events, work time starts upon the employee's arrival at the event and ends upon the employee's departure from the event. Shift starting times and days for Motor Units may be altered by the County for justifiable business reasons at the time of regular semi-annual seniority shift bid without bargaining the change with the Association. Shift bid posting for Motors will include work hours and days off but need not include district assignments or city assignment.

Deputies may be assigned to Canine duties at the discretion of the County. It is anticipated that Canine Deputies will provide routine care of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that 4 hours per week (34 minutes a day) is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

Section 2. Workweek. Non-continuous Operations.

The workweek shall consist of five (5) consecutive eight (8) hour days, Monday through Friday, except for employees covered by another workweek schedule listed within this Article or as outlined in the job assignment posting.

Section 3. Workweek. Continuous Operations.

The workweek for employees engaged in continuous operations shall consist of consecutive days.

Employees engaged in continuous operations are defined as being any employee or group of employees engaged in an operation for which there is regularly scheduled work for twenty-four (24) hours a day, seven (7) days a week such as but not limited to Patrol, Records and Corrections.

Section 4. Four (4) Ten (10) Work Schedule.

It is mutually agreed that the County may employ employees on a four (4) day work week ten (10) hour a day basis, referred to as the 4/10 schedule, rather than those hours set forth above in this Article. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Section 5. 3-12/3-12 + 8 Hour Work Schedule.

The 3-12/3-12 + 8 work schedule shall consist of one work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, followed by four (4) days off, and the other work week with the seven (7) day payroll week of the three (3) twelve (12) hour work days, with an eight (8) hour work day, followed by three (3) days off. This schedule may begin with either the long or the short work week. Employees assigned this schedule are subject to the section 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 80 hours in the 14-day period. Overtime on a daily basis will be paid as provided in Article 13. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Section 6. 5-9/4-9 Work Schedule.

The 5-9/4-9 work schedule shall consist of five (5) consecutive nine (9) hour workdays followed by two (2) consecutive days off, followed by four (4) consecutive nine (9) hour workdays, followed by three (3) consecutive days off. During the 4-9 work week, Friday shall be the first of the three consecutive days off. The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Pursuant to the 5-9/4-9 schedule, the parties agree that employees assigned to this schedule are subject to the 7k exemption under the Fair Labor Standards Act. This 7k exemption establishes a 14-day work period. Overtime will be paid for hours worked in excess of 81 hours in the 14-day period. Overtime on a daily basis will be paid for hours worked exceeding nine (9).

Section 7. 9-80 Work Schedule.

The 9-80 work schedule is as follows:

For the purposes of this 9-80 schedule, the work week will be defined from 12:00 p.m. on Friday to 11:59 a.m. the following Friday. The schedule is one (1) week of four (4) consecutive nine (9) hour workdays and a fifth day of a four (4) hour shift. The new work week starts thereafter on the same day followed by another four (4) hour shift, two (2) days off, and one (1) week of four (4) consecutive nine (9) hour workdays, with the following fifth day off.

The schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association.

Section 8. School Resource Officers.

During the school year, School Resource Officers (SRO) shall work a five (5) day work week, eight (8) hours a day schedule, Monday through Friday. The SRO's may be assigned to a four (4) day work week, ten (10) hours a day with either Friday through Sunday off or Saturday through Monday off depending upon the needs of the specific school and/or Sheriff's Office. School Resource Officers will be assigned to day shift but may request an alternative shift and/or alternative days off. Notification of their Summer schedule shall be given at least thirty (30) days prior to the change unless mutually agreed to be shorter. When a school holiday and a County holiday are the same, the SRO will have that day off. On days when students are not present, (unless the school requests their presence), the SRO's will report to patrol for their regular working hours.

Section 9. Schedule of Deputy Medical Examiners.

See Article 38.

Section 10. Shift Trading.

For employees who agree to trade shifts for one day, the traded shift becomes each employee's assigned shift. Failure to work the shift will have the same consequences as if the employee did not work the employee's regular shift. Shift trades may be made only between employees working in the same capacity, must be voluntarily agreed to by the employees involved, and must be approved by management after being fully informed of the trade and before the work is performed. Overtime does not apply to traded shifts.

If approved, in writing and signed by the supervisor, an employee may designate an equivalent amount of vacation hours to the employee working their shift in lieu of working a shift in exchange.

Section 11. Schedule Assignments.

1. Patrol Division: 4-10 schedule with consecutive days off. Management will decide if the schedule for Support Staff assigned to the Patrol Division will be another schedule as provided in Article 4.

2. ~~Investigations Division~~—Detectives: 4-10 schedule with consecutive days off. Detectives will work Monday through Thursday. Friday, Saturday, and Sunday will be their regular days off. either select Monday or Friday as the "third" day off based on Division seniority with the understanding that the Monday/Friday is divided between employees such that coverage is provided Monday through Friday every week as determined by Management. Management will decide if the schedule for Support Staff assigned to the Investigations Division will be another schedule as provided in Article 4.

This schedule may be terminated upon the mutual consent of the parties or by thirty (30) days' written notification by either the County or the Association. In the event the 4-10 schedule is terminated by the County for Detectives, Detectives will revert back to the 5-9/4-9 schedule in Section 6 and double-time will be reinstated under Article 15, Section 5.

3. Corrections Deputies and Corrections Deputy Recruits: 3-12/3-12 + 8 schedule.

Section 12. DPSST Basic Academy Training.

All DPSST Basic Academy mandatory activities such as but not limited to instruction time, flag raising, and physical fitness training shall be considered as normal work duty time and shall be compensated as such. The work week shall consist of a forty (40) hour work week, based upon a five (5) day work week, eight (8) hour work day. These eight hours of the work day may be non-consecutive due to long break periods between classes and other required activities. If the amount of time spent in required activities totals more than forty hours per week, overtime will be paid at time and one half. Attendance at voluntary Basic Academy events is not considered work time.

The County agrees to continue to pay for the employee’s meals and other normal required Basic Academy expenses such as room and instruction expenses. This does not include optional equipment expenses which shall be paid by the employee, or other equipment that the employee is normally required to purchase.

Section 13. Civil Division.

Deputies and Sergeants assigned to the Civil Division shall work a 5-9/4-9 schedule as provided in Section 6.

The implementation of the 5-9/4-9 work schedule shall terminate upon the mutual consent of the parties or by thirty (30) days written notification from either party of its desire to terminate. Neither party shall file a grievance if either party decides to terminate this agreement.

Civil deputies will sign up by seniority for hours of work, shift preference and days off. Civil sergeants will have alternating Fridays or Mondays off as determined by management.

ARTICLE 5 - MEAL AND REST BREAKS

Section 1. Meal periods.

All employees will be granted a meal period during their working shift, during which time employees are subject to call when needed.

All non-sworn staff may be allowed to combine one (1) of ~~his/her~~their rest periods with ~~his/her~~their meal period with Division Commander approval.

Meal periods are on paid time.

Section 2. Rest periods.

Employees working an eight (8) or nine (9) hour day shall be provided with rest period of fifteen (15) minutes during each half of the employee’s shift. Employees working a ten (10) hour day shall be provided with a rest period of twenty (20) minutes during each half of the employee’s shift. Employees working a 12-hour shift shall be provided with two twenty (20) minute rest periods during the employee’s shift.

Rest periods are on paid time.

ARTICLE 6 - SHIFT PREFERENCE, CHANGES AND DAYS OFF

Section 1. Seniority for Shift Preference and Days Off.

For the purposes of shift preference and selection of off duty days within a Division, seniority shall be the major consideration along with the needs of the Sheriff's Office and the individuals involved. When shift preference or selection of off duty days is not based upon seniority, the employee shall be given notice in writing at least seven (7) calendar days before the effective date of the needs of the Sheriff's Office that precluded the use of seniority for said shift preference or selection of off duty days.

Seniority shall be determined by the length of time an employee has within a job classification with the Sheriff's Office except for Recruit and Deputy Sheriff in which case seniority shall be defined as the hire date in either of these two classifications and for Recruit Jail Deputy and Jail Deputy in which case seniority shall be defined as the hire date in either of these two classifications. For Office Specialist 1 and Office Specialist 2 seniority shall be defined as the hire date in either of these two classifications.

An employee's request for transfer to a different shift or different days off shall be made in writing and shall go directly to the Division Commander under whom the employee is assigned. The Division Commander will act promptly upon the employee's request by written response to the employee of the approval or denial of the request. No request shall be denied unless an operational basis exists for the denial. In the event the request is denied, the Division Commander shall state the reason or reasons for denial in writing in the response to the employee.

Section 2. Shift Changes.

The Division or Watch Commander will make every effort to schedule shift changes or reassignment with the least amount of additional shifts to be worked by the employee over the regular work week.

1. Shift Reassignment:

If at the request of an employee or upon a shift assignment at the discretion of management, an employee is assigned a shift, or transferred to another assignment wherein the employee is required to work any consecutive days beyond their normal work schedule to adopt the new shift assignment, such additional time worked will be compensated as either overtime pay (under Article 13, Section 1) or one (1.0) hour of straight time as pay plus 0.5 hours as straight compensatory time for each hour worked.

For example: if an employee working a four (4) ten (10) schedule works a fifth consecutive ten (10) hour day, the ten (10) hours worked will only be compensated as overtime (under Article 13, Section 1) or 10 hours of straight time and 5 hours of compensatory time. (No other hourly compensation will be paid)

2. Day Off Adjust:

Day Off Adjust is considered as regular hours that an employee is not required to work due to shift rotation or transitioning to administrative leave. Day Off Adjust is paid at the regular straight time rate of pay.

If the employee is granted a Day Off Adjust to avoid working a consecutive day beyond their previous work schedule then overtime or compensatory time do not apply for the work days that follow during the shift adjustment period. For example: If an employee working a four (4) ten (10) schedule is given a Day Off Adjust on the last day of their previous work schedule (day 4 of 4) or another following consecutive day and then starts the new schedule the employee is not entitled to any overtime or compensatory time for the days following. (i.e.: straight time only will be paid for the 5, 6, and 7th day, respectively).

If the employee requests and management agrees to take a different Day Off Adjust other than the one offered by management to avoid consecutive days worked, the employee is not entitled to overtime or compensatory time for consecutive days worked. For example: in the above scenario if the employee is offered day 4 off but would rather have day 6 off (second day of their new schedule and work week) the employee is not entitled overtime or compensatory time for working the 5th day.

Section 3. Shift Rotation.

Shift rotation for Patrol Division, Jail Division, and Records Section occurs every six (6) months with days off sign up occurring based on classification seniority. An employee wishing to transfer to patrol from any special assignment, division or position shall notify both their Division Commander and the Patrol Division Commander, in writing, no later than June 30 or December 31 prior to the start of the shift rotation sign up.

Rotation Schedule for Employees:

Patrol/Records:

For non-sergeant employees, shift rotation and implementation occurs every six (6) months on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day. Bidding for shift rotation for non-sergeants will be completed between February 3 and February 4 and August 3 and August 4.

Patrol Sergeants' shift rotation and implementation will occur fourteen (14) days prior to the dates set for non-sergeants. Shift bidding for patrol Sergeants will occur by February 1 and August 1.

Full Time Employees assigned to a temporary duty during the Spring/Summer that begins before June 1 shall bid for a shift in February and shall remain in their regular shifts until assigned.

Jail:

For employees of the Jail Division, shift rotation and implementation occurs on the first day of the first payroll period in March and the first day of the first payroll period following Labor Day.

Bidding for Jail Sergeants will be completed between February 1 and February 3 and August 1 and August 3. Bidding for non-sergeants will be completed between February 5 and February 10 and August 5 and August 10.

Section 4. Rotation Process.

At least ten (10) days prior to the start of the bidding for shifts, a list of personnel will be posted. The list will assign each employee a specific half (1/2) day, based upon seniority, on which each employee will make him/herself available for phone contact to select a shift and days off. The list will include a beginning and ending time for each day that calls will occur, and selections accepted.

Each employee will be called in order of seniority to select his/her/their shift and days off. If the employee does not answer the phone, return a message or answer a page within one (1) hour, the bidding process will proceed past him/her/them. If/when the employee returns the call, s/he/the employee will select from the shifts and days off which are available at the time they called. If the employee does not return a call or during the hours posted, or provide a list of choices, his/her/their name will be placed at the top of the list at the time the employee contacts the office. The employee will be called first on the next day. If s/he/the employee does not respond, the process will be repeated for subsequent days of the sign-up period.

If the employee is not going to be available, s/he/they employee should notify their Watch Commander and the person(s) assigned to administering the calls, in writing, of their top seven (7) choices for shift and days off.

When an employee has been on paid or unpaid Administrative Leave status, due to allegations of internal violations or allegations of violations of law, for the thirty (30) calendar days prior to the start of the shift bidding day, the employee forfeits their position in the seniority based shift sign up. If the employee returns to duty status after the shift bidding period began, the employee will be assigned to a shift based on the needs of the department until the next regularly scheduled shift bidding.

Nothing in this section shall prevent the Association and/or Management from developing and applying technology to assist with improving the efficiency of the shift bidding process.

Section 5. Contract Cities.

A contract City is a City that requests services of the Sheriff's Office by contract in lieu of having their own independent law enforcement services.

1. Contract Cities Generally

Patrol Division personnel who wish to bid for assignments in contract cities shall follow the provisions of Article 6, Section 1, with the following additional requirements:

- A. All contract city assigned patrol positions shall be subject to specific written expectations for assignment to or maintaining assignment to a contract city. Those expectations shall be communicated to the employees. By mutual agreement, the city, the contract city Station Commander and/or appropriate Sheriff's Office Division Commander may reassign an employee in a contract city position if not meeting written expectations.
- B. Unexpected vacancies shall be filled by the affected Division Commander temporarily until a selection for the vacant position can be made as set out in Section 1 above.
- C. When the seniority shift bid is posted pursuant to Article 6, Section 1, the available shifts that are listed shall specify the work hours and days off. The duration of any assignment in excess of six (6) months must be indicated on the seniority shift bid posting.
- D. Employees who are eligible and elect to rotate out of the contract city assignment shall notify both their Station Commander and the Patrol Commander in writing consistent with Section 3.

2. City of Wilsonville and City of Happy Valley

All Wilsonville and Happy Valley Patrol Division positions shall be for a five (5) year length of time except for Traffic Units and School Resource Officers assigned to cities, which will be governed by the time frame established in the job announcement.

Employees have the option of leaving after completion of one (1) year in the assignment.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to Wilsonville or Happy Valley.

3. Other Contract Cities

- A. All full-time Patrol Division positions assigned to other contract cities (for 30 hours per week or more) shall be for a two (2) year period of time with the option of leaving after one (1) year in the assignment except for Motors Unit that will be subject to the regular semi-annual seniority shift-bid process.

An employee's ability to promote or be assigned to special units shall not be limited by the employee's assignment to contract cities.

B. Full-time employees may not be bumped pursuant to Article 6, Section 1, prior to completion of the two (2) year commitment.

ARTICLE 7- HOLIDAYS

Section 1. Holidays.

The following days, and every day appointed by the Board of Commissioners as a holiday, shall be recognized and observed as paid holidays:

New Year's Day (January 1st)
Martin Luther King Jr. Birthday (Third Monday in January)
President's Day (Third Monday in February)
Memorial Day (Last Monday in May)
Juneteenth (June 19th)
Independence Day (July 4th)
Labor Day (First Monday in September)
Veteran's Day (November 11th)
Thanksgiving Day (Fourth Thursday in November)
Christmas Day (December 25th)

Section 2. Holiday Pay.

Continuous operations employees shall receive eight (8) hours pay for each of the holidays listed above on which they are not scheduled to work. If an employee is normally scheduled to work the holiday but has been granted the day off due to the holiday, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

Section 3. Weekend Holidays for non-continuous operations.

If an employee is normally scheduled to work the holiday, but has been granted the day off, the employee receives holiday time equivalent to their normal schedule. (i.e.: 10-hour shift, get 10 hours holiday for not working the holiday).

Holidays shall be observed on any day within the same work week as the holiday if the employee has requested a day and received supervisor approval at least the work week prior to the holiday. However, if the employee has not received supervisor approval in the week preceding the holiday, the holiday shall be observed as follows: 1) On the Tuesday if the holiday was on a Monday for employees working a Tuesday through Friday schedule; or 2) on the preceding Thursday if the holiday was on a Friday for employees working a Monday through Thursday schedule.

Section 4. Holiday During Leave.

Should an employee be on authorized leave when a holiday occurs, no leave hours will be charged for that day.

Section 5: Holiday Worked.

If an employee works on any of the holidays listed above, he/shethe employee shall, in addition to his/hertheir regular pay, be paid for all hours worked at the rate of time and

one-half (1-1/2) [his/her/their](#) regular rate of pay. For purposes of this sub-section only, holiday pay shall be equal to the scheduled shift. For example, if the employee works on a holiday and is assigned an 8, 9, 10, or 12 hour day, they shall receive 8, 9, 10, or 12 hours of holiday pay respectively, not inclusive of overtime.

Section 6. Personal Leave.

Each employee shall receive two (2) personal leave days per calendar year. The length of each personal leave day is equal to the number of hours that employee is scheduled to work when the leave day is taken. Personal leave days cannot be used on a per hour basis. The personal leave days are non-cumulative in nature and must be used during the calendar year or they will be forfeited by the employee. Personal leave days have no value upon separation of employment.

The County cannot arbitrarily deny the use of a personal leave day. Any employee whose personal leave day(s) remains unused at the end of the calendar year because use of the day(s) was denied, the employee shall be compensated for the unused day(s) using the employee's regular rate of pay for an eight (8) hour duration. New employees shall be eligible for two (2) personal leave days after ninety (90) days of employment.

Upon ratification, each employee shall receive an additional personal leave for the 2021 calendar year, and each employee shall receive and additional personal leave for the 2022 calendar year. These additional days shall be taken pursuant to the terms above.

ARTICLE 8 - SICK LEAVE

Section 1. Accrual.

Employees shall accrue sick leave at the rate of eight (8) hours for each month worked. Sick leave shall be accrued without limit. Newly hired employees shall accrue eight (8) hours of sick leave per month starting upon hire, however they are not eligible to use leave until after working thirty (30) calendar days and accrue at least the minimum amounts required by state law. Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue sick leave for the next month on the first day of that month as per the County's 11-Day Rule policy.

Section 2. Verification of Sickness.

Absence due to sickness in excess of three (3) days may require verification by a health care provider at the request of the Division Commander. Appropriate documentation may be required for an absence of less than three (3) days if the Division Commander has reasonable suspicion (based upon a pattern of absences over a minimum of a three-month period of time) that misuse or abuse of sick leave exists.

Section 3. Use of Sick Leave.

Employees may utilize sick leave for their own illness/[medical care](#) or that of a family member, or as otherwise permitted by law. Employees may utilize sick leave when unable to perform their job duties due to health related reasons. The use of sick leave shall be equal to the work-day of the respective employee.

Engaging in recreation, other employment, or other activities not related to ill health will be considered misconduct and the Sheriff may discipline employees engaging in such activities subject to the principles of Article 20, Discipline ~~A~~and Discharge.

Section 4. Bereavement Leave.

Exclusive of regular sick leave, an employee shall be granted not more than three (3) consecutive workdays' leave of absence with full pay in event of the death of a member of ~~his~~ the employee's immediate family. Where deemed necessary by the Sheriff, or their designee, the employee shall be granted two (2) additional days with pay for travel time. Workday is the regular shift schedule the employee is assigned at the time of the leave.

In addition to the benefit provided in this section, employees may also use bereavement leave as provided by OFLA.

Immediate Family for Section 4: An employee's immediate family shall be defined as spouse, parents, parents of the spouse, domestic partner, parents of the domestic partner, children, stepchildren, brother, sister, grandparents (of employee, spouse or domestic partner), grandchildren, sister-in-law and brother-in-law and in loco parentis. Stepchildren, stepparents, or children of domestic partner residing with the employee, shall be included in the definition of immediate family. In relationships other than those set forth above, under exceptional circumstances, such leave of absence may be granted by the Sheriff or ~~his~~ their designee upon request.

Section 5. Unused Accrued Sick Leave at Time of Retirement.

Pursuant to and consistent with PERS rules and regulations, the County shall report all allowable sick leave hours to PERS upon separation from County employment.

Section 6. Sick Leave Donation.

An employee may donate accrued sick leave to another employee when the second employee (donee) does not, or will not, have adequate accrued sick leave to cover their leave ~~an injury or illness~~ as long as: (a) the donee will be on approved FMLA and/or OFLA leave when the donee's absence occurs; and/or (b) the donee will be on leave for the same FMLA/OFLA qualifying condition, even after the donee has exhausted the term of protected FMLA/OFLA leave, when the leave occurs ~~illness of the second employee qualifies under FMLA or the Oregon Family Leave Act (OFLA) guidelines~~. Sick leave hours shall be donated and used on an hour for hour basis. All donated leave is forfeited by the donor.

Section 7. Pay and Subpoenas While on Leave.

An employee is not required to perform any work while on family medical leave or sick leave absence. The Sheriff's Office will not require an employee to perform any work while on family medical leave or sick leave absence, including attendance in court. However, the parties recognize that the Sheriff's Office cannot control the issuance of a subpoena by other parties. If an employee on such leave is subpoenaed for an appearance in a case arising out of official duties, and is unable to attend, the employee shall notify the person causing the subpoena to be issued. If the employee appears pursuant to the subpoena, they shall be compensated as set forth in Article 14. If the Sheriff's Office's receives a lawful

subpoena compelling the employee's court attendance, the Sheriff will make an attempt to contact the employee. It shall be sufficient for the Sheriff to call the employee's listed telephone number(s), leaving a message if the employee is unavailable and there is an adult person with whom a message may be left or a device on which to leave such message. If the employee is unavailable and there is no person or device with which to leave a message, it shall be sufficient for the Sheriff to forward a copy of the subpoena to the employee by sending it to the employee's home or such other address that the employee provides for such purpose. No employee will be disciplined or counseled for failure to obey a subpoena that is served upon the employee during a County-approved family medical leave or bona fide sick leave absence.

ARTICLE 9 - VACATION LEAVE

Section 1. Accrual.

Employees having served in the County service for two (2) consecutive full calendar months, shall be credited with sixteen (16) hours vacation leave. Thereafter, vacation leave shall be accrued as follows:

- A. Less than five (5) years of continuous service, 140.4 hours per year, accrued at the rate of 11.7 hours per month. Vacation leave will not accumulate beyond 240 hours.
- B. Five (5) to ten (10) years, but less than ten (10) years of continuous service, 164.4 hours per year, accrued at the rate of 13.7 hours per month. Vacation leave will not accumulate beyond 240 hours.
- C. Ten (10) to fifteen (15) years, but less than fifteen (15) years of continuous service, 188.4 hours per year, accrued at the rate of 15.7 hours per month. Vacation leave will not accumulate beyond 320 hours.
- D. Fifteen (15) to twenty (20) years, but less than twenty (20) years of continuous service, 204.0 hours per year, accrued at the rate of 17.0 hours per month. Vacation leave will not accumulate beyond 320 hours.
- E. After twenty (20) years of continuous service, 219.6 hours per year, accrued at the rate of 18.3 hours per month. Vacation leave will not accumulate beyond 360 hours.

Effective January 1 of each calendar year, accruals exceeding the maximum shall be reduced to the maximum. See also Article 11.13. Vacation time shall be allowed to accumulate beyond the aforementioned maximum where the employee has requested vacation and such vacation request has been denied. Any vacation leave that would otherwise have been lost shall be taken as soon thereafter as the needs of the County and the availability of vacation relief allow.

Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue vacation leave for the next month on the first day of that month.

Section 2. Termination or Death.

After six (6) months of service, upon the termination of an employee for any reason, or in the event of the death of an employee, all accumulated vacation shall be paid either to the employee or his/her/their heirs, whichever the case may be.

Section 3. Vacation Scheduling.

Employees shall be permitted to choose either a split (including less than a full day of vacation) or entire vacation. Whenever possible, if consistent with the needs of the County in conjunction with the availability of vacation relief, employees shall have the right to determine vacation time.

The County shall make available a vacation sign-up sheet twice each year;

1. For vacations occurring from the first full payroll period in March through the first payroll period following Labor Day (“Spring Bump”):
 - a. Non-Jail Staff: February 5 to February 10.
 - b. Jail Staff: February 11 to February 20.
2. For vacations occurring after the payroll period following Labor Day through the Friday before the March shift bid begins (“Fall Bump”)
 - a. Non-Jail Staff: August 5 to August 10.
 - b. Jail Staff: August 11 to August 20.

Any conflicts in requested vacation time shall be resolved by granting the requested time off to the employee with the most seniority.

The vacation schedule shall be frozen on:

- a. Non-Jail Staff: February 15 and August 15
- b. Jail Staff: February 21 and August 21.

Employees are not required to sign up to use vacation time during these two sign-up periods. An employee may request vacation at any time throughout the year provided, however, that for vacation scheduled other than during the February and August sign-up periods, seniority may be used to resolve conflicts only for vacations of less than one work week provided the employee exercises his/her/their seniority rights at least thirty (30) calendar days before the effective date of the vacation request.

The County must accept or reject an employee’s request for vacation within seventy-two (72) hours of receipt of the request. The seventy-two (72) hour response time limit does not apply during the vacation sign up periods described above.

Section 4. Required Use of Vacation.

The Sheriff may require each employee to take a maximum of ten (10) days’ vacation within the employee’s anniversary year.

Section 5. Commitment to Retire.

1. For employees hired before ~~execution of this agreement (2018) June 7, 2018~~, an employee who provides written or email notice to the Sheriff, or ~~their~~ designee, and the Agency Finance Section of their ~~signs~~ a commitment to retire within three years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed three (3) times the maximum accrual of vacation and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay, 457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of his/her/their retirement not more than three years into the future. If an employee does not retire on the date specified in their commitment to retire notice, ~~the signed commitment to retire, he/she/they~~ shall lose any accrued vacation in excess of the carry over limit set at 1080 hours.
2. For employees hired after ~~June 7, 2018~~ ~~execution of this agreement (2018)~~, an employee who provides written or email notice to the Sheriff, or ~~his~~their designee, and the Agency Finance Section of their ~~signs~~ a commitment to retire within three (3) years from the date such request is made shall be allowed to accrue vacation in addition to the provisions of Article 9 for the purposes of vacation payments upon termination of employment. The amount of vacation paid shall not exceed seven hundred and twenty (720) hours and shall be paid to the employee upon retiring from employment with the County. At the employee's choice, distribution of vacation payment may be taken in either pay, 457 deferred account funding, or a combination of both. An employee making a commitment to retire shall specify the date of their/his/her retirement not more than three (3) years into the future. If an employee does not retire on the date specified in their commitment to retire notice, ~~the signed commitment to retire,~~ excess vacation over the employee's² vacation cap under Article 9.1 will be paid to the employee, and the employee is precluded from applying for Section 5 benefits again. The Sheriff may consider exceptional circumstances for reapplying for Section 5 benefits.

ARTICLE 10 - OTHER LEAVES

Section 1. Leave of Absence.

Leaves of absence for medical purposes is covered by County Code and policy.

Leaves of absence without pay for a limited period, not to exceed ninety (90) days, shall be granted by the Sheriff at his/her/their discretion for any reasonable purpose, ~~which is defined as bona fide educational purposes related to work~~. Such leave may be renewed or extended by the Board of County Commissioners. Reasonable purpose will not include engaging in other employment. The Sheriff may make exceptions for those whose purpose is to engage in temporary employment that is clearly in the best interest of the Sheriff's Office.

Section 2. Jury Duty.

Employees shall be granted leave with full pay any time they are required to report for jury duty or jury service, in lieu of jury fees, excluding mileage reimbursement upon any day that they are scheduled to work. Employees will be required to call their Watch Commander when less than a normal work day is required by jury duty. The Watch Commander shall determine if the employee shall be required to report to work and shall take into consideration the travel time of the employee.

Section 3. Family Medical Leave and Parental Leave.

Family medical leave and parental leave will be granted in accordance with all Federal and State statutes and ~~the~~ Clackamas County policy.

Section 4. Educational Leave.

After completing one (1) year of service, an employee upon request may be granted a leave of absence without pay for educational purposes at an accredited school, when it is related to ~~his~~~~their~~ employment. The period of such leave of absence shall not exceed one (1) year, but it may be renewed or extended at the request of the employee, when necessary.

One (1) year leave of absence with any requested extension, for educational purposes, may not be provided more than once in any three (3) year period.

Employees may also be granted leaves of absence with or without pay for educational purposes, for additional lengths of time, to attend conferences, seminars, briefing sessions, or other functions of a similar nature that are intended to improve or upgrade the individual’s skill or professional ability, provided it meets with the approval of the Sheriff.

ARTICLE 11 - HEALTH AND WELFARE

Section 1. Accrual of Benefits.

A regular status employee working greater than or equal to 20 hours per week is eligible for medical benefits on the first of the month following the benefit waiting period described in Section 10.

Section 2. Medical-Hospital.

The County agrees to contribute toward the monthly composite premium at the existing dollar level for coverage defined in the Summary Plan Descriptions agreed to by the Association and the County. Family coverage shall include dependent college students up to the age of twenty-six (26) and dependent coverage required under Federal or State statutes. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

~~For calendar year 2018, the County agrees to pay 95% of the composite premium rate for Providence medical plans and the employee agrees to pay 5% of the premium costs. The County agrees to pay 100% of the premium for employees enrolled in the Kaiser medical plan.~~

For the plan years effective January ~~21, 2021~~~~2019~~, January 1, 2022 and January 1, 2023~~0~~, the County agrees to pay 95% of the composite premium rate for Providence medical plans and the employee agrees to pay 5% of the premium costs. However, if the premium increases more than 10% in any one year, the County and the employee shall evenly split the increased costs above 10%. The joint committee identified in Section 12 shall be utilized as a method to control increased premium costs.

The County agrees to pay 100% of the premium for employees enrolled in the Kaiser medical plan.

If the parties, while bargaining for a successor collective bargaining agreement, have not reached agreement regarding this Article 11, by September 30, ~~2023~~~~2020~~, the County will conduct an open enrollment process for health care coverage to be effective January 1, ~~2024~~~~2021~~, with the County agreeing to pay 95% of the total composite rate premium costs for the Providence Plans and 100% of the cost for the Kaiser medical plan. This temporary increase in the County's contribution will satisfy the County's obligation to maintain the status quo for the medical plans while bargaining continues.

Insurance Opt-Out: Employees who provide proof of other medical coverage and who opt out of coverage provided by the County will receive cash back on a monthly basis a monthly stipend as provided by the yearly Benefits Summary, paid to the employee's HRA/VEBA. ~~For 2018 this value is \$176 per month and in no case will be less than this value for the term of this agreement as defined in Article 40.~~ Employees may only rejoin County coverage with a qualifying condition subject to carrier rules.

Section 3. Life Insurance.

The County agrees to contribute monthly an amount equal to the life insurance premium with a death benefit of \$75,000. Employees in a classified position, regularly scheduled for thirty (30) or more hours of work per week, will become eligible on the first day of the month following the benefit waiting period described in Section 10. The Life Insurance program will provide an Accelerated Benefits option provision. The cost for the Accelerated Benefits Option will be paid by the County.

Section 4. Dental Insurance.

The County agrees to contribute monthly an amount equal to the self-funded composite dental program rate for the existing family coverage with an individual benefit of \$1,500 per individual per year, including an orthodontic benefit for dependent children up to \$3,000. The employee may also choose alternative dental plans as provided by the County, including a plan provided through Kaiser. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

Section 5. Long-term Disability Insurance.

The County agrees to contribute monthly an amount equal to the long-term disability insurance premium for non-occupational accident or illness. Benefits, including those from other sources, will equal sixty percent (60%) of up to \$3,333 in monthly salary after an elimination period of the first 30 days of each period of total disability or the exhaustion

of accumulated sick leave, whichever occurs later. Employees will become eligible on the first day of the month following the benefit waiting period described in Section 10.

The County agrees to make available a supplemental disability insurance plan up to a maximum benefit of 60% of a \$10,000 monthly salary subject to plan eligibility. Contributions are only paid by the employee.

Section 6. Civil Insurance.

The present policy of providing insurance for all employees against civil suits covering insurable acts while in the performance of their duties will be continued.

Section 7. Surviving Spouse and Dependent Coverage.

The County agrees to provide spouses and dependents of deceased employees who were covered by this Agreement with medical and dental insurance as provided for in Sections 1 and 3 of this Article, for a period of twenty-four (24) months following the death of the employee. If, during the twenty-four (24) month period, the deceased employee's spouse becomes eligible for medical or dental insurance under another plan, the County provided insurance will cease on the inception date of the new insurance.

Section 8. Retiree Medical Benefits.

Three and one ~~half percent~~ ~~quarter percent~~ (3.25%) of an employee's base pay as set forth in the pay plan shall be placed into a fund to be administered by the Clackamas County Sheriff's Office Independent Retiree Medical Trust, "IRMT," (subject to the agreement below) to provide medical benefits for retired eligible employees who have not yet become eligible for Medicare benefits. ~~Effective January 1, 2019, the contribution will change to 3.5%.~~ The Retiree Medical Trust shall have the sole responsibility and the right for determining the amounts of benefits to be received and the eligibility for receipt of those benefits, subject to the agreement below. The benefit listed above shall apply to employees working during the "rehire period" under the Retired-Retiree Rehire section of Article 28.

The purpose of the IRMT is to administer the retiree medical benefits which are described in Article 11, Section 8 of the collective bargaining agreement and in the Agreement dated February 25, 2005 related to the Sheriff's Office Retiree Medical Fund.

- A. The County will continue to contribute funds at the rate set forth in Article 11(8) of the Agreement into an account designated by the Clackamas County Sheriff's Office Independent Retiree Medical Trust (IRMT). The County's obligation to contribute funds to the IRMT shall cease only upon written agreement by the County and the CCPOA.
- B. The County does not guarantee any particular level of retiree medical benefits to any individual or group of employees; and in the event that the IRMT reduces medical benefit levels, the County is not obligated to maintain retiree medical benefit levels or make up any difference in the level of retiree medical benefits.

Section 9. Domestic Partners.

Domestic partners, as described within this section, will be treated the same as spouses for purposes of medical, dental and life insurance programs described in this Article, subject

to Federal and State laws and regulations and completion of a notarized Affidavit of Domestic Partnership provided and approved by the Department of Human Resources. For the purposes of this section, Domestic partners include same and opposite sex couples.

Section 10. Benefits Waiting Period.

Benefits shall become effective on the first day of the calendar month following the employee's date of hire. ~~on the first day of the month following two (2) months of continuous employment. Continuous employment as related to health and welfare benefits shall be defined as being in a paid status during the entire benefits waiting period, except for an unpaid period not to exceed ten (10) working days, or eight (8) working days for employees on a four day work week, or the prorated equivalent for part-time employees.~~

Section 11. Plan Changes Required by Law or Insurance Carrier.

The County shall act to update any mandated coverage or changes caused by Federal or State laws, rules and regulations or required by the insurance carriers. Unilateral changes in benefits initiated solely by the insurance carriers are subject only to impact negotiations with the Association pursuant to ORS 243.698.

Section 12. Joint Peace Officers/County Benefits Committee.

Effective upon ratification of this agreement and in the open enrollment period following the ratification of this agreement, all Association employees shall participate in the benefit plan as agreed through negotiations between the Association and the County.

- A. The Joint Peace Officers/County Benefits Committee shall have the responsibility to make recommendations regarding the level, scope, and design of benefit plans offered to employees for medical and vision coverage, dental coverage and for disability and life insurance. The primary emphasis in plan design shall be to provide a comprehensive, competitive benefit program at a reasonable cost. The Committee will investigate all options for providing insurance including forming an employee's benefit trust and/or partial self-funding.
- B. The Committee shall be comprised of an equal number of members from the Association and County. A non-voting County Commissioner will be invited to attend all meetings. The Committee shall meet at least quarterly, or more frequently if required. Decisions of the Committee will be made by a majority of votes. Absentee members will also be given the opportunity to vote.
- C. The Committee shall make plan design recommendations for medical, vision, dental, disability and life insurance plans at least one hundred and twenty (120) days prior to the beginning of the following plan year. Any changes to plan designs must be through negotiations between the Association and the County.
- D. The County shall provide administrative coordination and support for the Committee. The Committee shall be provided all financial information and related reports as may be available.

- E. The Committee shall consider various options available to control increased premium costs.
- F. No changes will be made to benefit plans without the approval of the Association and County.

Section 13. Health Reimbursement Account (HRA).

The County shall provide each employee covered by this agreement the opportunity to enroll in a Health Reimbursement Account (HRA).

The County shall pay the account fee up to \$1.50 per account per month for each active employee enrolled in a HRA/VEBA. The participating employee shall be responsible for the third party annualized investment fee.

Participating employees who have used at least forty (40) hours of vacation in the prior calendar year shall have all vacation time up to eighty (80) hours in excess of the annual cap, as referenced in Article 9(1), paid into their HRA/VEBA account.

Section 14: Flexible Spending Account (FSA).

Employees may participate in the Flexible Savings Account offered by the County at the employee’s expense for contributions. Employer will pay the administrative fee.

ARTICLE 12 – WAGES

Section 1. Wages and Classification Schedule.

In lieu of a retroactive pay adjustment, current employees will receive a one-time payment after execution by both parties. The payment will be based on ~~2.62%~~ of an employee’s gross pay earnings (base pay, overtime, longevity and incentives) from the beginning of the pay period closest to July 1, ~~2017-2020~~ to the ~~ratification~~~~execution~~ date. Any new incentives or add-to-pays to this agreement are not included in this payment.

Effective July 1, ~~2021~~, the pay plan for all classifications within the bargaining unit will be increased by ~~1.82.5%~~.

~~Effective July 1, 2019, the pay plan for all classifications within the bargaining unit will be increased 3.0%.~~

~~After ratification by both parties, employees shall receive a % cost of living increase effective the first day of the pay period after the ratification date.~~

~~Effective July 1, 2020, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%.~~

~~Effective July 1, 2022, employees shall receive a cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: West Urban Annual~~

Average, as reported by the U.S. Department of Labor, with a minimum of 0% and a maximum of 4.5%.

The COLA percentage will be sent to the Association President by April 1 of each year. An updated pay plan will be published by the County each year by July 1 on the Department of Human Resources website.

~~The Consumer Price Index (CPI) used in calculating wage adjustments shall be based on the Consumer Price Index—Urban Wage Earners and Clerical Workers (CPI-W), U.S. Cities Average for All Items, as reported by the U.S. Department of Labor, Bureau of Labor and Statistics. The change in the CPI-W shall be the indicator located in the “Annual” column of the “12 Months Percent Change” report. The COLA percentage will be sent to the Association President by April 1 of each year.~~

Section 2. Deferred Compensation.

An amount equivalent to four percent (4%) of the employee’s base pay as set forth in the pay plan shall be placed into a deferred compensation plan for each employee, the plan to be administered by a provider with whom Clackamas County has contracted for deferred compensation services.

Section 3. Time of Service.

Step increases (merit raises), and longevity pay for regular full-time employees, shall be determined on the basis of calendar months within which the employee has worked without interruption in service. “Interruption in service” shall not include those authorized leaves as set forth in this Agreement.

Section 4. Longevity Pay.

For every five (5) years (60 months) of continuous County service, the employee shall receive \$~~63,776~~69,07 per month longevity pay in addition to ~~his~~their normal compensation. Eligibility shall be based upon the number of continuous years of regular status County Service. Continuous service for the purpose of determining eligibility for longevity pay shall be service unbroken by separation from County employment that results in a changed date of hire. Upon ratification by both parties, the amounts shall increase by the amount of wage increase determined in Section 1 above. On July 1, ~~2021~~2018 and July 1, ~~2022~~2019, the amounts shall increase by the amount of wage increase determined in Section 1 above.

Section 5. Computation of Hourly Rate. Salary scale has hourly rate.

The base hourly rate is specifically identified for each classification in the pay plan. The pay plan also shows a 2080 base annual salary formulated on the base hourly rate of pay.

Section 6. Records Unit Graveyard Shift Differential Pay.

Employees in the Records Unit of the Support Services Division who work 51% of their scheduled work hours after 12:00 midnight shall receive a shift differential of \$1.00 per hour for all hours worked during their shift. If an employee is requested or required to continue working at the end of their regular shift and has been receiving shift differential based on their graveyard shift, the employee will continue to receive the shift differential. (Example: Employee is on graveyard and is mandated to work into the day shift).

Employees working voluntary overtime or mandated from swing shift into graveyard are not eligible for graveyard shift.

ARTICLE 13 – OVERTIME

Section 1. Overtime.

Time and one-half (1.5) the employee's regular hourly rate of pay shall be paid for work under any of the following conditions, but compensation shall not be paid twice for the same hours:

- A. All authorized work performed in any work day in excess of:
 1. eight (8) hours for employees on a 5-8 work schedule, or
 2. nine (9) hours in a nine (9) hour work day or eight (8) hours for an eight (8) hour work day for employees on a 9-80 schedule; or
 3. nine (9) hours for employees on a 5-9/4-9 work schedule, or
 4. ten (10) hours for employees on a 4-10 work schedule, or
 5. twelve (12) hours in a twelve (12) hour work day, or eight (8) hours in an eight (8) hour work day, for employees on a 3-12/3-12 + 8 hour work schedule;
- B. All authorized work performed in excess of:
 - forty (40) hours in any work week for employees on a 5-8, 9-80 or 4-10 work schedule, or
 - eighty-one (81) hours in the regular 14-day work period for employees on a 5-9/4-9 work schedule, or
 - eighty (80) hours in the regular 14-day work period for employees on a 3-12/3-12 + 8 work schedule;
- C. All authorized work performed on a regularly scheduled days off. In the event an employee is required to work on a day off, the employee will be paid a minimum of four (4) hours at time and one-half.
- D. Employees working five consecutive days with eight hour shifts shall be paid time and one-half (1.5) for all work performed on the sixth (6th) and seventh (7th) day of their regular workweek. Employees working four consecutive days with ten hour shifts shall be paid time and one-half (1.5) for all work performed on the fifth (5th), sixth (6th) and seventh (7th) days of their regular work week. Employees working the 3-12/3-12 + 8 schedule shall be paid time and one-half (1.5) for all work performed: in their "short" week, on the days following their three regular work days; and in their "long" week, on the days following their four regular work days.
- E. On the day that daylight savings begins ("Spring Forward") if an employee would be short one hour of work on their work shift, the employee shall either work an hour earlier than the start of their shift, an hour later at the end of their shift, or use

a hour of accrued vacation or compensatory time in order to be paid for the entire shift. The employee shall notify their supervisor in the preceding payroll period of ~~his/her~~their preference. On the day that daylight savings ends (“Fall Back”) the employee will be compensated at the rate of time and one half (1.5) for any hours worked beyond their respective normal shift. The additional shift will be considered mandatory overtime.

Any paid leave used shall be considered hours worked for purposes of calculating overtime. Overtime will only be paid for actual hours worked.

For full time employees, hours worked that are an extension of a previously worked shift shall be paid at overtime at time and one half (1.5) for actual hours worked, except as maybe limited by Article 13(2).

For regular part-time employees, overtime is paid pursuant to Article 26.

Section 2. Assignment of Overtime Patrol Division Continuous Operations & CSO

-When there are vacancies created by ~~sick, vacation or training-approved~~ leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

- A. Electronic communication is the preferred method of staffing shortages on shifts in ~~Patrol and Corrections Divisions~~. All electronic communication will occur between the hours of 0700 and 2100, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in ~~under Article 13(3)(E) 72 hours prior to the start of the vacancy~~. Once the lock in period has started (~~120 hours for Jail and 72 hours for Patrol and Services~~)-available overtime will be posted via electronic communication method for each overtime shift.

1. If the overtime callout is less than two (2) hours away or the shift has begun – the employees will have fifteen (15) minutes to call in.
2. If the overtime callout is more than two (2) hours away, but less than four (4) hours away - the employee will have one (1) hour to call in.
3. If the overtime callout is more than four (4) hours away, but less than 24 hours away - the employee will have two (2) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

- ~~1. Employees will have one (1) hour to call in if the overtime callout is less than four (4) hours away and two (2) hours if the overtime callout is more than four (4) hours away but less than twenty-four (24) hours away.~~

- ~~a. Vacant shift less than four (4) hours away— if one (1) hour has passed and the overtime has not been taken, the overtime shall be awarded to the first employee to call in regardless of seniority.~~
- ~~b. Vacant shift more than four (4) hours, less than twenty four (24) hours away— if two hours have passed and the overtime has not been awarded, the overtime shall be awarded to the first employee to call in regardless of seniority.~~

B. Employees will have the following time to call in if the overtime callout is 24 hours or more away:

- a. 1st shift overtime will be locked at 5 PM before start of shift.
- b. 2nd shift overtime will be locked at 9 PM before start of shift.
- c. 3rd shift overtime will be locked at 9 PM before start of shift.
- d. 4th shift overtime will be locked at 12 PM before start of shift.
- e. If the vacancy is not filled by the deadline outlined in a-d of this subsection, notice of the available shift may be re-posted via electronic communication method and the vacancy will be filled on a first come-first served basis.

C. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.

~~D. The Association will provide the County with a seniority list of employees twice a year to coincide with scheduled shift changes. The list will include hours and days of the week during which the employee will be available to work extra shifts. The list will also include the employee's primary and secondary contract telephone or pager numbers.~~

E.D. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift, ~~then calls will be made from the seniority list within classification it will be offered via electronic communication as described in Article 13(2)(A).~~ If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication ~~calls shall be made from the seniority list~~ to employees in classifications other than the classification where the vacancy exists.

E. When more than two hours' notice has been received of a vacancy that has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours ~~(one hundred and twenty (120) for Corrections Division)~~ before the start of the shift, regardless of

seniority. ~~Corrections Division employees may sign up for overtime in half shift segments.~~

F. Available overtime shifts may be split among multiple employees. A junior employee may not bump two senior employees who are each signed up for one-half of the same shift. If one half of a shift is signed up for by an employee with less seniority than the employee desiring to bump, the bumping employee may bump for the whole shift or for the half shift signed up for by the junior employee. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must ~~also~~ contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift. An employee, who fails to report for a scheduled shift, will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8 or an emergency situation, and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime sign-up privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.

G. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training, the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted, with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than seventy-two (72) hours (~~one hundred and twenty (120) for Corrections Division~~) before the start of the shift, regardless of seniority.

H. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division and third, from a different classification, ~~.-~~ Except as provided for in Article 13(2)(F).

Section 3. Assignment of Overtime Corrections Division

When vacancies created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

A. Electronic communication is the preferred method of staffing shortages on shifts in the Corrections Divisions. All electronic communication will occur 24 hours per day, seven days a week.

Overtime will be filled via posted CLASSweb lines until locked in 120 hours prior to the start of the vacancy. Once the lock in period has started, available overtime will be posted via electronic communication method for each overtime shift.

1. -If the overtime callout is less than five (5) hours away or the shift has begun – the employees will have thirty (30) minutes to call in.

2. -If the overtime callout is more than five (5) hours away, the employee will have four (4) hours to call in.

If no one takes the overtime in the prescribed time periods above, the overtime will be awarded to the first person to call in, regardless of seniority.

B. If the electronic communication is unavailable or should an unforeseen issue arise, the Association and County agree to revert back to previously used manual callout procedure.

C. When the County determines a replacement is needed for a shift vacancy occurring with less than two hours' notice, the work will be offered first to those employees already on duty, by seniority, in classification. If no one elects to work the shift, it will be offered via electronic communication as described in Article 13(3)(A). If no one in the classification where the vacancy exists wants to work the shift, then it will be offered by electronic communication to employees in classifications other than the classification where the vacancy exists.

D. When more than two hours' notice has been received of a vacancy that the County has been determined needs to be filled, the County must exhaust the overtime list provided by the Association prior to filling the shift by any other means. Sign up will be seniority in classification. Bumping will be permitted with notice to the affected employee being the responsibility of the employee doing the bumping. Bumping will not occur when there is less than one hundred twenty (120) hours before the start of the shift, regardless of seniority.

E. Available overtime shifts may be split among multiple employees. An employee, regardless of seniority, classification and/or division, may bump another employee from a portion of a shift, so long as the employee doing the bumping will work all of the hours signed up for by the employee being bumped and at least one additional hour. The employee doing the bumping must also contact a supervisor to change the schedule. If an employee accepts overtime and later decides to decline the accepted overtime, the employee must notify a supervisor of the change if less than seventy-two (72) hours exists before the scheduled shift commences. If less than twenty-four (24) hours exist before the scheduled shift commences, the employee must have authorization from a supervisor to be excused from working the shift.

An employee, who fails to report for a scheduled shift, will be given an unexcused absence for failing to report to work. However, employees will not be charged an unexcused absence if unable to perform their duties due to health related reasons under Article 8, or in an emergency situation and calls in to report their absence as required by Sheriff's Office practices or policies. Temporary loss of overtime sign-up privileges may be part of the progressive discipline issued to an employee failing to comply with this provision as follows: a first offense may result in a ten-day loss of overtime signup privileges; a second violation within a year, a thirty-day loss; and a third violation within a year, a sixty-day loss.

F. When overtime assignments occur for routine or special events (including emergencies that become routine) that do not require special unit supervision or special skill and training the County will use reasonable effort to notify employees of the available overtime. Sign up will be by seniority in classification. Bumping will be permitted with notice to the affected member being the responsibility of the member doing the bumping. Bumping will not occur when there is less than one hundred and twenty (120) hours before the start of the shift, regardless of seniority.

G. Replacement personnel shall come first from the same classification and division as the employee creating the vacancy, second from the same classification but different division, and third, from a different classification. -Except as provided for in Article 13(3)(F).

Section 4. Assignment of Overtime Other Divisions and Sections

When vacancies are created by approved leaves and the County determines the vacancies are to be filled, they will be filled by seniority among bargaining unit personnel under the following conditions:

Overtime will be posted in a manner in which sign up is available to all employees who are eligible to perform the work. Overtime signup will be locked in seventy two (72) hours prior to start of the shift. Seniority will be by classification in division.

Section 5. Additional Overtime Rules

- A. A temporary employee, hired on a 90-day basis, will only be used to replace personnel who are scheduled to be absent for more than twenty (20) working days for employees working a 5/8 work schedule or 16 working days for employees working a 4/10 work schedule.
- B. The County and the Association recognize it is not in the best interest of the County to have employees be required to work overtime. The County will continue its policy of reducing or eliminating the use of mandatory overtime.

Section 6.3. DPSST Basic Academy Overtime.

Employees enrolled in the DPSST Basic Academy will be paid at time and one-half (1.5) their regular hourly rate of pay for required activities, as described in Article 4, Section 12, exceeding 40 hours in any work week. This Section shall apply in lieu of Section 1 of this Article.

ARTICLE 14 - COURT APPEARANCES

Section 1. Time Outside Regular Shift for Court Appearances.

A court appearance is all authorized time spent by an employee other than on their regular work day in criminal or civil proceedings, where their attendance is required, arising out of the performance of the employee's ~~his~~ official duties.

If the court case is listed on the trial line the night before the scheduled appearance date and the employee is notified of the cancellation on the day of the appearance, the employee will receive the applicable minimum court time.

Regular Work Day:

1) Employees attending a court appearance that is more than 30 minutes before the start of their scheduled work day will receive a minimum of two (2) hours at time and one-half (1.5) if on a regular workday: except that employees assigned to graveyard and fourth shift patrol shall receive three (3) hours for mandatory court appearances on a regular work day instead of two (2) hours. Graveyard shift is defined as half or more of the shift is worked after midnight and fourth shift patrol is from 1700 to 0300.

2) Employees attending a court appearance within 30 minutes of their scheduled work day will receive 30 minutes of time and one-half (1.5) rate ~~overtime~~ for the time worked before the start of the shift.

Regular Scheduled day off:

If an employee attends court on a regularly scheduled day off, the employee will receive a minimum of four (4) hours at the time and one-half (1.5) rate. ~~except that, employees assigned to graveyard shift shall receive three (3) hours for mandatory court appearances on a regular work day instead of two (2) hours. Graveyard shift is defined as half or more of the shift is worked after midnight.~~

Multiple Court Appearances on the same day:

In the event an employee attends more than one court appearance where the start time of the second appearance falls within either four hours (day off), three hours (graveyard work day), or two hours (work day) of the start time of the first appearance, minimum compensation as set out above shall not be earned for the first appearance, unless the member was released from the subpoena and had no prior notification of the subsequent court appearance, and minimum compensation as set out above shall apply to the latter appearance, and minimum compensation as set out above shall be earned for no more time than from the start time of the first appearance up to the start of this second appearance.

For example, if an employee receives prior notification of two subpoenas on a day off, where the appearance times are 1100 and 1300, the employee shall earn four hours of court appearance pay for the second court appearance and two hours for the first court appearance, so long as there is an off duty break of more than fifteen (15) minutes between

the two court appearances. In the event there is no break between court appearances, continuous compensation would accrue at a minimum of no less than four hours.

Section 2. Overtime Pay While On Approved Paid Leave.

Overtime pay while on approved paid leave will be awarded as follows:

- A. If the ~~employee member~~ had an approved paid leave day scheduled before receiving a court subpoena, it will be handled as a day off under Article 14, unless the ~~employee member~~ elects to be credited the approved paid leave time actually spent in court.
- B. If the ~~employee member~~ requests a paid leave day for a day that they already ~~has had~~ a subpoena, it will be handled as a work day under Article 14. If court time would be during ~~their~~his normal duty time, the ~~employee member~~ will have their paid leave hours adjusted hour for hour so that no leave time will be lost.

ARTICLE 15 - CALL BACK/CALL OUTS

Section 1. Call Back.

“Call Back” is defined as an employee being contacted outside their regular work hours on a regularly scheduled work day and being called back to work.

Call back time, when authorized, will be paid as overtime. Minimum compensation for a call back will be the equivalent of two (2) hours.

A regularly scheduled work day is considered the calendar day on which the shift begins.

Section 2. Call Out.

“Call Out” is defined as an employee being contacted on a ~~regularly~~ scheduled day off and being called out to work.

Call out time, when authorized, will be paid as overtime. Minimum compensation for a call out will be the equivalent of four (4) hours

Section 3. Conditions for Call Outs and Call Backs.

In the event an employee is called back or out to work within 30 minutes of either the beginning or end of a regularly scheduled shift, the employee will receive 30 minutes of overtime pay.

In the event an employee’s shift is extended, the employee will receive overtime for the hours worked consistent with Article 13.

A de minimis contact, such as an isolated phone call by management to an employee, lasting around 5 minutes or less is not compensable.

Employees who voluntarily sign up for a scheduled overtime assignment are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled overtime assignment.

Employees who voluntarily sign up for scheduled events are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the scheduled event.

Employees who elect training on a day off are not eligible for call back or call out compensation and only receive overtime for actual hours worked for the training.

Section 4. Electronic Notification Devices.

Both the County and the Association recognize that notification of an emergency call out is greatly enhanced with the use of electronic devices and helps to facilitate expedient responses. Additionally, it is acknowledged that the carrying of County issued electronic devices during off duty time is voluntary, unless otherwise required under Article 17.

Section 5. Call Outs for Detective, ITF and Craft.

A. Detectives:

~~For Detectives:~~ A ~~Call Out~~ ~~call-out~~ is defined as an employee being contacted on their regularly scheduled days off and being called back to duty for an unplanned event. A Detective assigned to day shift who receives a ~~Call Out~~ ~~call-out~~ after the end of their last shift of a work week and before the beginning of their next regular shift would receive Call Out pay. Any ~~Call Out~~ ~~call-out~~ within four hours of the start of their regular shift will be paid actual overtime worked up to the start of the employee's regular shift.

If the County changes Detectives' schedules back to 5-9/4-9s from 4-10s, double time for Detectives will be reinstated as set forth below and under Article 4, Section 11.

B. ITF, ~~and~~ CRAFT, ~~CFU and CSI~~:

~~For ITF and CRAFT:~~ Call Out pay will be authorized at double time for employee's regular assigned days off. The double time pay rate applies whenever an employee is notified of the requirement to return to work during their off-duty weekend hours. The double time pay rate continues to apply for all work performed during the call out if it occurs during the employee's weekend hours. The initial response to the ~~callout~~ **Call Out** and subsequent follow-up investigations during the employee's weekend hours are considered "unplanned" events.

If an employee is notified during their normal work hours that they will be needed for work during their upcoming weekend off-duty hours, this would be considered a 'planned event' and the employee is entitled to be paid the overtime pay rate as contained in Article 13. When their work on the planned event is complete, the

employee will return to off-duty status and subsequent ~~Call Outseal-outs~~ would be considered unplanned and the employee would be paid at the double time pay rate.

Minimum Call Out shall be for ~~(4)~~ four (4) hours except when called out within four (4) hours of the start of their regular shift in which case the double-time will be paid up to the start of the employee's regular shift.

Call ~~Outout~~ is defined as an employee being contacted outside their regular work schedule and being called back to duty for an unplanned event. Example: ITF or CRAFT is assigned to day shift, Monday through Thursday, receives an assignment after the end of ~~his/her~~their shift on Thursday and before the beginning of ~~his/her~~their regular shift on Monday would receive Call Out pay at the double time rate.

If employees assigned to ITF or CRAFT become subject to On Call Pay under Article 17, Section 2, those employees will no longer receive double-time for call outs under this subsection (B) and will instead be subject to Sections 2, 3 and 4 of this Article for call outs.

ARTICLE 16 - TRAVEL PAY

Whenever an employee is required to report for work in any location other than ~~their~~his/her established place of work ~~or whenever an employee, as part of his/her regular work is required to travel~~, and transportation is not provided by the County, ~~they~~he/she shall be paid for the use of ~~his/her~~their personal transportation at the rate established by the Internal Revenue Service for reimbursement for business use of personal vehicle. The employee will not be reimbursed for use of their personal vehicle if the place they are required to report is within Clackamas County, or it is outside of the county but closer to their residence than the location where they would report to obtain a county vehicle.

Whenever an employee is required to appear for work at any location other than their established place of work, the employee will not be compensated for drive time to and from the location if the location they are required to report is closer to their residence than their established place of work. If the location the employee is required to report is further from their residence than their established place of work, they will be compensated for the actual drive time to and from the location, less the usual amount of time it takes them to report to their established place of work.

Established place of work shall be defined as any office, reporting station, or precinct maintained by or for the County in which employees are assigned to work either permanently, or on a temporary basis of 90 days or more.

Whenever the County opens a new office, reporting station, or precinct, or changes the location of an existing office, reporting station, or precinct, those employees who are affected by the move may exercise a seniority bump as provided in Article 6 of this contract.

~~For required appearances within Clackamas County, the employee shall use his/her/their own transportation without any reimbursement for the use of a personal vehicle or their own assigned take-home vehicle if available. The employee's work time commences when he/she reports to the designated location.~~

~~For required appearances outside of Clackamas County, an employee living closer to the location of the required appearance may elect to drive his/her/their personal vehicle directly to the location of the required appearance rather than reporting to the Sheriff's Office to obtain a County vehicle. Under such circumstances, the employee shall not be reimbursed for the use of his/her/their personal vehicle, however, the employee's work time commences when he/she/the employee leaves home for the required appearance. All other employees shall report to the Sheriff's Office to obtain a County vehicle to travel to appearances outside Clackamas County. The employees work time commences with his/her/their arrival at the Sheriff's Office.~~

For travel requiring per diem, the rates set and maintained by the US General Services Administration (www.GSA.gov) based on the travel destination shall be used, and Per diem will be provided to the employee before their departure date, so long as the County has fourteen (14) days' notice before the departure date. Per diem will be provided to the employee after their return from travel if the County does not receive fourteen (14) days' notice before the departure date.

ARTICLE 17 - ON CALL PAY

Section 1. On Call Assignment.

Employees may be assigned by management to be "on-call." The assignment requires an employee be readily available to report to work and respond to the needed work location within 60 minutes of notice. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. Assignment of on-call is at the discretion of the County and assignments will be in writing. On-call status is not payment for hours worked and is not considered compensable time.

For each hour assigned to on-call status, employees will earn the equivalent 1/8th straight time, applied to the compensatory time bank. Employees are encouraged to use the time off during the calendar year.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

Section 2. Detectives.

Detectives may be assigned to on-call status to be available to work when off duty. The number of Detectives assigned to on-call is at the discretion of the County.

The County will provide for a bid in six month increments for on call assignments subject to operational need. Detectives will select coverage periods in an equitable fashion by classification seniority. Unfilled coverage periods will be assigned in order of inverse classification seniority.

The County is not precluded from posting shorter periods of on-call assignment for particular operational needs, which will be filled first voluntarily and if still unfilled will be assigned by inverse classification seniority.

Employees are permitted to trade on-call periods with supervisory approval.

Detectives assigned to on-call will earn the equivalent 1/8th straight time applied to a Detective Leave Bank (DLB) to be used for later time off. Hours earned will be reported with regular pay periods. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on “On-call” status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee retains the ownership of accrued time up to 120 hours and may request the use of time off following existing practices within the employee’s new classification. Upon separation of employment, the Detective Leave Bank has no compensable value.

Employees will be paid, consistent with Articles 13 and 15, when called to work.

Employees assigned to ITF or CRAFT may receive on-call pay under this Section 2 if assigned by the County to on-call status. In such case, double time will cease for call outs for those employees as set forth in Article 15, Section 4(B).

Section 3. Detective Sergeants.

Effective on the 1st day of the month after ratification, as compensation for being “on-call,” Detectives Sergeants will earn the equivalent of four (4) hours of straight time per month applied to a Detective Leave Bank (DLB) to be used for later time off. The hours reported will be upon the first day of the month. On-call status is not payment for hours worked and is not considered compensable time.

Employees may accumulate up to a maximum of 120 hours of DLB time and do not earn DLB time above this cap if on “On-Call” status. If an employee changes assignments and is no longer eligible to earn DLB time, the employee does not retain ownership of accrued time. Upon separation of employment, the DLB has no compensable value.

This section shall not apply to CCITF Sergeants.

ARTICLE 18 - WORK ABOVE NORMAL CLASSIFICATION

Section 1. Working Out of Classification.

Whenever an employee is assigned to perform any work for one-half or more of a shift in a classification above that in which the employee is normally classified, the employee shall be paid for such work hours at the first step in the range assigned to the higher classification or a five percent (5%) increase of base hourly rate, whichever is higher, unless said employee is being trained for a higher classification in accordance with an approved training and development plan.

Section 2. Special Assignments.

A. CCITF: A Deputy temporarily assigned and working the Clackamas County Interagency Task Force (CCITF) will be eligible to be paid five percent (5%) above their/his/her base hourly rate after successful completion of a training period for the probationary periods described within. One hundred and eighty days (180) after the employee starts working in the assignment. At the end of the training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor will recommend one of the following: (1) granting of the pay increase prospectively, (2) withholding the pay increase and re-evaluating at 365 days, or (3) removal of the individual from the assignment. If a member is re-evaluated at 365 days, the Unit supervisor shall recommend that the pay increase be granted prospectively or recommend removal from the assignment. The Unit supervisor's recommendations will be forwarded to the Division Commander for review and approval. In consideration for the additional compensation set forth above, the Sheriff shall have authority to end an assignment to the CCITF as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

B. Rotational Detective. Upon beginning work in the assignment the Deputy will be paid five percent (5%) above their base-hourly rate. After the conclusion of a 180-day training period, the Unit supervisor will evaluate the member's progress in becoming a productive unit member. The Unit supervisor's evaluation will be forwarded to the Division Commander for review and approval. The Sheriff shall have authority to end an assignment of a Rotational Detective as needed for business reasons without a demand from the Association to bargain the decision or any pay issues.

A Deputy working as a Rotational Detective will be eligible for the following additional benefits: (1) Compensated at the hourly rate of 1.5 for authorized overtime work, (2) Detective clothing allowance as outlined within this agreement in place of the uniform cleaning allowance, (3) Sign up for "on-call" coverage upon completion of the 180 day training period, based on Division seniority, and (4) Accrual of earned time off in the "Detective Leave Bank" (DLB), which will be capped at 120 hours in accordance with Article 17. When the Deputy rotates out of Detectives, the Deputy retains no ownership of the accrued DLB time. The hours in the DLB have zero cash value.

ARTICLE 19 - TRAINING/PROBATIONARY PERIODS

Section 1. Training.

Sworn employees shall be provided sufficient training to maintain DPPST certification. The employee shall participate in training, including firearms training, at times set by the Sheriff or ~~his~~their designee. Employees required to participate in any training that exceeds the total number of hours in their regularly scheduled work week shall be compensated at the overtime rate for time spent in training, including commuting when required by the Fair Labor Standards Act or to flex their hours with approval of their supervisor. Employees

who elect training on a day off when otherwise available during a regular work day will receive overtime for time spent in training, with no 4-hour minimum.

Section 2. Probationary Periods.

New Recruits (DPSST certified classifications): Employees hired as Deputy Sheriff Recruit or Jail Deputy Recruit will serve a total of 18 months (545 days) in an initial probationary status, including 365 days as a Recruit and 180 days after promotion to Deputy after successful completion of the recruit program regardless of whether they are new hires or transfer from other County employment. This probationary period is for the purpose of DPSST certification and post-training evaluation. A Recruit will not be promoted to Probationary Deputy status unless the employee has received DPSST certification and successfully completed the FTEP program. At the discretion of the Sheriff, this probationary period may be extended for the purposes of DPSST certification and successful completion of FTEP.

New employees (non-DPSST certified classifications): Employees hired into non- DPSST certified positions serve a 365 day probationary period, regardless of whether they are new hires or transfer from other County employment. For positions requiring an FTEP program, the probationary period may be extended to account for the FTEP program.

Lateral Hire: Employees hired for a DPSST certified position who comes from another law enforcement agency are considered a lateral hire. A DPSST certified employee hired as a lateral will serve an initial probationary period of 365 days.

During any initial probationary period, an employee does not have just cause or grievance rights for discipline or discharge.

A probationary period may be extended in circumstances, ~~such as where training has not been completed or in circumstances~~ of medical leave or other lawful leave. ~~(For for example: worker's compensation).~~

Promotions: An employee serving a probationary period as a result of appointment from a promotion list shall serve a probation of 180 days. A DPSST certified employee who fails to qualify in the new position during the probationary period shall be reinstated to ~~his/her~~ their former position. This provision does not provide for reinstatement to a Recruit position. A non DPSST certified employee who fails to qualify during the probationary period in the new position shall be reinstated to ~~his/her~~ their former position if the position is open.

ARTICLE 20 - DISCIPLINE AND DISCHARGE

Section 1.

Disciplinary action may be imposed upon an employee only for just cause, using the principles of progressive discipline. Disciplinary action may take any of the following forms: written reprimand, temporary pay reduction, suspension, demotion, or dismissal.

Temporary pay reductions shall be limited to no more than six pay periods and a two-step reduction.

Counseling: Counseling is not discipline and may not be protested through the grievance process, except where the Association challenges whether the counseling is disciplinary. Counseling is a less formal means of resolving issues related to daily operations, interpersonal conflicts, and minor matters of improper conduct. Counseling documents are not placed in an employee's personnel file, however, they may be maintained in the Watch Commander's file and may be mentioned in the next yearly evaluation. Employees may provide a written rebuttal to the counseling within ten (10) calendar days of the employee's receipt of the written counseling memorandum. Upon request, an employee may review and request copies of counseling documents in the employee's Watch Commander's file. After the later of twelve (12) months or the employee's next annual performance evaluation, the counseling will be considered stale if no further counseling or discipline has been imposed for similarly related conduct. Nothing herein prevents or prohibits command staff from discussing operational matters informally with employees.

Section 2.

In the event an employee is under investigation concerning a matter that they reasonably believe may lead to discipline, the following procedural due process shall be followed:

a. Notice of Investigation:

Prior to an administrative investigatory interview, the County will provide the employee and Association with at least 24-hours' notice of an investigatory interview and will describe the nature of the charges or allegations that may result in discipline. If the accuser or witness is an employee, or the accuser's identity is otherwise protected by law, their information may be redacted if necessary to comply with statutes prohibiting the County from disclosing their identity, unless the accuser or witness expressly waives their confidentiality in writing. The 24-hour notice of interview may be less if such notice would jeopardize the successful completion of the investigation through possible loss of material evidence.

The notice of investigatory interview will also include:

- 1) The right to have an Association Representative present,
- 2) The name of the assigned investigator, and
- 3) The date, time and location of the interview.

b. Investigatory Interviews:

Employees subject to an investigative interview will be provided the following:

- 1) The employee may have an Association representative present during the interview so long as the interview is not unduly delayed.
- 2) No more than two interviewers at a time may question the employee.

- 3) The County will record the investigatory interview. A copy of the audio/video recording will be provided to the employee and Association upon request. The employee or Association is not precluded from audio recording; however, notice of recording must be provided in advance and a copy provided to the County upon request.
- 4) In a compelled interview solely for noncriminal purposes, an employee who refuses to respond to questions or to be interviewed shall be informed that refusal may lead to discipline up to and including termination. But for threat of disciplinary action for refusing to answer questions as compelled, the employee being interviewed may not be threatened with punitive action or subjected to offensive language.
- 5) If the employee is compelled to answer questions, the employee will be notified of the expectation to answer all questions fully and truthfully to the best of the employee's ability subject to discipline up to and including termination.
- 6) The interview will be reasonable in time in consideration of the nature of the allegations.
- 7) The employee and Association representative will be permitted reasonable break periods.
- 8) The Association representative may not be required to disclose, or be subject to disciplinary action for refusing to disclose statements made by the ~~officer~~employee to the representative for purposes of the representation.
- 9) As soon as it is determined that the employee may be charged with a criminal offense, the employee must be informed of the employee's right to consult with criminal defense counsel with respect to the criminal charge.
- 10) In the event that another interview is needed, the employee and Association will be provided a copy of any audio/video recording or transcript (if prepared) of the prior interview before the subsequent interview takes place.

c. Due-Process/Loudermill Meeting:

Prior to the imposition of a disciplinary action, the employee and Association will be given the opportunity to have a Due-Process/Loudermill meeting. The County will provide a written Notice of Intent to Discipline ("Notice of Intent") to the employee and Association at least ten (10) calendar days prior to the Due-Process meeting. The ten (10) calendar day notice period may be waived by mutual

agreement between the County and Association. The Notice of Intent will include the following information: (1) the nature of the charges, (2) the findings of the investigation, (3) the policy violations or misconduct sustained, and (4) notice of the disciplinary sanctions being considered. In addition, with its Notice of Intent, the County will provide the employee and Association a full and complete copy of the investigation file, including but not limited to audio/video files.

The Due-Process meeting is voluntary, and the employee may have an Association representative present on their behalf. The employee or Association may also provide a written statement in lieu of the Due-Process/Loudermill meeting so long as the statement is provided to the County no later than the scheduled meeting.

d. Internal Investigations:

The County will make reasonablebest efforts to conduct and conclude internal investigations promptly. The County will notify an employee when an investigation is completed and the result of the investigation. The ability to complete an internal investigation in a timely manner depends on many circumstances that are not necessarily under the County's control. In the event an internal investigation is not concluded within ninety (90) calendar days from the date of initial notice of investigation the County will provide the employee and Association with a general explanation of the reasons for the delay and the expected duration and completion, not to exceed twelve (12) months in total. Timelines do not apply to those factors set forth in ORS 236.360(6)(b).

The County may reopen an investigation upon discovery of new material information or evidence resulting from the employee's pre-disciplinary response or the evidence could not have been discovered sooner without extraordinary measures.

Appeals shall be processed through the grievance procedure starting at Step II within thirty (30) calendar days of the effective date of the disciplinary action.

~~Counseling: Counseling is not discipline and may not be protested through the grievance process. Counseling is a less formal means of resolving issues related to daily operations, interpersonal conflicts, and minor matters of improper conduct. Counseling documents are not placed in an employee's personnel file, however, they may be maintained in the Watch Commander's file and may be mentioned in the next yearly evaluation. Employees may provide a written rebuttal to the counseling within ten calendar days of the counseling. Upon request, an employee may review and request copies of counseling documents in the employee's Watch Commander's file. After the later of 12 months or the employee's next annual performance evaluation, the counseling will be considered stale if no further counseling or discipline has been imposed for similarly related conduct. Nothing herein prevents or prohibits command staff from discussing operational matters informally with employees.~~

Section 32.

The County will provide a copy of imposition of any disciplinary action to both the employee and Association outlining the specific reason for such action.

Section 43.

If the County has reason to discipline an employee, it shall not be done in manner that is likely to embarrass the employee before other employees or the public. Nor shall said discipline be done in a manner personally demeaning of the employee.

Section 54.

A probationary employee shall be afforded the opportunity to grieve alleged contract violations pursuant to Article 21, Settlement of Disputes, of this Agreement; however, this shall not include any matter involving discipline and/or discharge. This provision applies only to an employee's initial probationary period with the County.

Section 65.

Written reprimands, shall be considered stale after twenty-four (24) months, and temporary pay reductions after thirty-six (36) months, and cannot be used as a basis for progressive discipline if no further counseling or discipline has been imposed for similarly related conduct, except for notice of rule.

Section 76.

No material reflecting critically on an employee shall be placed in an employee's personnel file until the employee has been given the opportunity to acknowledge receipt, whether in person or electronically. The employee shall have the right to attach employee comments to anything placed in the employee's personnel file or Watch Commander's training file.

Section 87.

No grievance material shall be kept in the personnel file other than grievances resulting from disciplinary action.

Section 98.

Prior to any changes in the Sheriff's or the County's policies on complaint and discipline procedures which are applicable to the Sheriff's Office employees represented by the Association, including but not limited to CCSO Policy 18 (PSU) and the PSU Procedure Manual, the Association shall be given notice of those changes and an opportunity to provide comment or demand to bargain on the changes before they are adopted to the extent required by the bargaining law.

Section 10.

At the completion of the investigation, regardless of the findings the employee under investigation and/or the Association may review the PSU investigation file in accordance with PSU policy. the County will provide the Association with a complete copy of the PSU investigative file, regardless of the final investigation findings.

In the event of a public records request for disciplinary, investigatory, or personnel file materials, the County and/or Sheriff's Office will provide written notice to the employee

prior to the release and subject to public records law. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of disclosure under *Brady* of disciplinary, investigatory, or personnel file materials to a prosecutor, the County and/or Sheriff's Office will provide written notice to the employee prior to release. The release of the files will follow the procedure outlined in the PSU Procedure Manual.

In the event of a request by a prospective employing law enforcement agency for disciplinary, investigatory, or personnel file materials pursuant to the requirements of HB 4207 (2020), the County and/or Sheriff's Office will provide written notice to the employee prior to the release and subject to HB 4207 (2020).

ARTICLE 21 - SETTLEMENT OF DISPUTES

Section 1. Grievance and Arbitration Procedure.

Any grievance or dispute which may arise between the parties involving the application, meaning or interpretation of this Agreement, shall be settled in the following manner:

STEP I. An Association representative, with or without the employee; shall take up the grievance or dispute with the employee's immediate Division or Watch Commander within thirty (30) calendar days of the earliest date of either the employee grievant or Association Representative knew or should have known of the alleged grievance. The Division or Watch commander shall then attempt to adjust the matter and respond to the Association representative within fourteen (14) calendar days.

STEP II. If the grievance has not been settled, it may be presented in writing by the Association representative to the Sheriff or ~~his/her~~their designee within fourteen (14) calendar days of the Division or Watch Commander's response. After receiving notification, the Sheriff or ~~their/his/her~~ designee shall respond to the Association representative in writing within fourteen (14) calendar days.

STEP III. If the grievance has not been resolved, it shall be presented by the Association representative to the Board of County Commissioners; or its designees within fourteen (14) calendar days of the response of the Sheriff's Office. After receiving notification, the Board of County Commissioners or its designees shall respond in writing to the Association Representative; within fourteen (14) calendar days.

~~STEP IV. Mediation: If the grievance has not been resolved with the response provided by the Board of County Commissioners or its designees at Step 3, the Association may continue the grievance by submitting it to mediation within fourteen (14) calendar days from either the Board of County Commissioners response or within fourteen (14) calendar days from the due date of the response. The parties may mutually agree to a local mediator or default to use a mediator provided by the Employment Relations Board. The parties agree to equally share the cost of the mediator. Unless otherwise agreed by the parties, the period for mediation will be limited to one hundred and~~

~~twenty (120) calendar days, starting from timely notice of mediation by the Association. The parties must meet at least once and agree to meet in good faith to resolve the grievance. After the earlier of one hundred and twenty (120) calendar days of mediation or notice of impasse by the Association after at least one mediation session, the Association may move the grievance to the next step. Termination cases are not subject to the mediation process and may move to the next step. The parties may mutually agree to forego mediation.~~

~~STEP ~~V~~IV. Arbitration: If the grievance is not resolved at Step III during the mediation period, the Association may provide written notice and request for arbitration within fourteen (14) calendar days after the reply of the Board of County Commissioners of notice of mediation impasse. ~~For termination cases the Association will provide written notice and request for arbitration within fourteen (14) calendar days after the reply of the Board of County Commissioners.~~~~

If arbitration is requested, the parties shall forthwith agree upon an arbitrator who shall act as sole arbitrator of the dispute. The parties agree that any decision of the arbitrator which is within the scope of this Agreement shall be final and binding upon them. In the event that the parties fail to agree upon the selection of an arbitrator, a list of arbitrators shall be requested from the Employment Relations Board of the State of Oregon. The list requested shall consist of seven (7) arbitrators. Each party shall, in turn, strike one arbitrator at a time from the list until one name remains. The Association takes the first strike.

The arbitrator whose name remains shall act as the arbitrator of the dispute. The arbitrator shall not have authority to modify, add to, alter or detract from the provisions of this Agreement. The arbitrator shall exercise all powers relating to admissibility of evidence, conduct of the hearing and arbitration procedures, provided that in so doing, he shall not contravene any provisions of this Agreement. The compensation of the arbitrator and all expenses incurred by him/her shall be borne by the party against whom the arbitrator's decision is adverse. However, the arbitrator shall have the power to require the parties to share in the expense of the arbitration proceeding in any proportion that the arbitrator deems reasonable.

Section 2.

If the County fails to adhere to the response time outlined above, such failure will allow the grievance to proceed to the next step in the process within the timelines above. Any of the time periods set forth in this Article may be extended upon mutual agreement of the parties.

Section 3.

By mutual agreement, any grievance filed under the terms of this article may be referred to mediation at any time during the grievance process. The Association and the County agree to equally split the cost of such mediation.

ARTICLE 22 - MISCELLANEOUS

Section 1. No Discrimination.

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit. There shall be no discrimination against any employee in the bargaining unit as to age, sex, marital status, race, disability, color, creed, religion, sexual orientation, national origin, or political affiliation or other status as applicable by State or Federal law. The Association shall share equally with the County the responsibility for applying this provision of the Agreement.

~~All references to employees in this Agreement designate both sexes, and wherever the male gender is used, it shall be construed to include male and female employees.~~

The County agrees not to interfere with the rights of employees to become members of the Association, and there shall be no discrimination, interference, restraint, or coercion by the County, or any County representative, against any employee ~~in or~~ because of Association membership or because of any other cause prohibited by law.

Section 2. Department Policy.

The County agrees to furnish each employee in the bargaining unit with an electronic copy of all existing work rules within thirty (30) days after they become effective. New Association members shall be provided a copy of the rules.

Employees shall comply with all existing rules that are not in conflict with the terms of this Agreement, provided the rules are uniformly applied and uniformly enforced.

The County will comply with ORS 243.698 when the County seeks to change policies or work rules.

Section 3. Adequate Protection.

The County is dedicated to the principle of adequate levels of safety and service in the Sheriff's Office. Matters related to safety may be brought to the safety committee or command staff for review.

Section 4. Copies of Collective Bargaining Agreement (CBA).

The CBA will be available on the County website. Employees may print a copy at work once per year.

Section 5. Over/Under Payments.

Any employee knowingly receiving unauthorized payments has the obligation to call such known errors to the attention of their supervisor. Notwithstanding the foregoing, if the County discovers that an employee is receiving unauthorized payments, it may recover such payments as provided below.

A. Underpayments

When an error occurs resulting in a negative impact on the employee, upon notification by the employee, in writing to the Payroll Manager, and verification by the payroll division,

payment in correction of the error shall be made in the employee's paycheck for the current pay period.

B. Payments in Error

When an employee receives payments due to a clerical, technical, or computer error, through no fault of the employee, and where the employee did not and could not reasonably have known that the error occurred, the employee will only be liable for, and the County shall only recover, the overpayment for a period of one-hundred and eighty (180) days preceding the date of discovery of the error. If the discovery of the error is made by the employee who notifies the Payroll Manager in writing within ten (10) working days of discovery of the error that they believe their pay is incorrect and the County does not subsequently make a correction to stop the overpayment by the next payroll period after notification, the employee will not be liable for additional overpayments that occur following the date of notification.

C. Repayment to the County

As soon as the overpayment is known, the County will make every effort to recover overpayments by payroll deduction over a reasonable period of time.

1. The County Payroll Manager shall notify the employee in writing of the overpayment which will include information supporting that an overpayment exists, and the amount of wages and/or benefits to be repaid. For purposes of recovering the overpayments by payroll deduction, the following shall apply:
2. The employee and the County shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following the written notification.
3. If there is not mutual agreement at the end of thirty (30) calendar days, the County shall implement the repayment schedule stated in subsection (7) below, unless the employee or Association files a grievance under subsection (5) below.
4. If the overpayment amount to be repaid is more than twenty-five dollars (\$25) ~~dollars~~, the overpayment shall be recovered in amounts not to exceed twenty-five dollars (\$25) ~~dollars~~ per payroll period. The employee may elect a higher repayment amount. If an overpayment is less than twenty-five dollars (\$25) ~~dollars~~, the overpayment shall be recovered in a lump sum deduction from the employee's paycheck.
5. An employee who has a factual disagreement with the County's determination that the overpayment has been made to the employee may grieve the determination through the grievance procedure.
6. This article/section does not waive the County's right to pursue other legal procedures and processes to recoup an overpayment made to former employees.

7. Employees can elect to either establish a payment plan through payroll deductions as described in 22(C)(4) above or may elect to pay overpayment in one lump sum. In the event the employee chooses to make a lump sum payment to the County, the County will adjust the amount owed for any tax paid, and will reduce the amount of employees' wages for the year on the employee's W-2 form by the amount repaid.

ARTICLE 23 - USE OF RESERVE PERSONNEL

Section 1.

The County may maintain a Reserve Program. Typical or similar duties that may be assigned to Reserve Officers on a voluntary/paid basis include, but are not limited to: school athletic events, crime scene security, transporting prisoners within the Patrol Division only and traffic control (accidents/parades). Reserves may be used in conjunction with retirees and/or regular Sheriff's Office members for parks patrol and Lake Oswego Marine Patrol for the length of ~~this~~the 2017—2020 collective bargaining agreement and during the period of time utilized for bargaining of a subsequent contract.

Reserve Officers will not be allowed to replace regular fulltime Corrections Officers and/or regular fulltime Deputy Sheriffs due to vacant positions, any absences including, but not limited to, vacations, training, approved leave of absence or to temporarily fill any DPSST certified bargaining unit position.

Reserve Officers may be allowed to work with regular fulltime employees on a voluntary basis and only with the permission of the regular fulltime employee to whom he/she is assigned. Reserves may be assigned with a fulltime employee and paid in emergency~~s~~ies situations, (i.e., acts of God, natural and man-made disasters, civil disorders within the County).

Section 2.

The County and the Association agree that Reserve Deputy Sheriffs being hired to perform duties listed in Section 1 must be ~~a~~a-graduate~~s~~s of the Clackamas County Sheriff's Academy or an equivalent law enforcement academy conducted in the state of Oregon.

Section 3.

Upon request, the Association will be provided by the County every quarter a list of all voluntary and paid duties and hours performed by reserves.

ARTICLE 24 - ~~FAIR SHARE AGREEMENT~~DUES & CHECKOFF

Section 1.

All employees whose classification or job title is included in Article 1, Recognition, of this Agreement may voluntarily join the Association as a member. The County agrees to deduct dues, fees, costs, charges, and assessments in the amounts determined by the Association from the compensation of each employee who individually authorizes such a deduction in writing on the authorization from provided by the Association. Such authorization shall be terminable upon such notice as is specified in the authorization. The County shall deduct

~~such authorized amount each pay period from each employee's compensation and remit such amounts monthly to the Association Treasurer. The County and the Association agree to a "Fair Share" agreement for all employees whose classification or job title is included in Article 1, Recognition, of this Agreement.~~

Section 2.

~~Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues deduction for that calendar month. In as much as it is required that the Association represent every employee within the bargaining unit, making each employee thus a recipient of the Association's services, it is mutually agreed and recognized by the parties that each employee who, on July 1, 1977, or any date thereafter, is an employee of the County and a member of the bargaining unit set forth in Article 1, Recognition, to which the Association serves as the bargaining agent, but who is not a member and chooses to remain not a member of the Association, shall proportionately and fairly share in the cost of the collective bargaining process.~~

~~The County and the Association jointly supervised an election by the employees in the bargaining unit, and a majority of those employees voted that non members of the Association who are in the bargaining unit shall pay his or her "fair share in lieu of dues." Therefore, the costs per non-Association employee is fixed proportionately at the amount of dues uniformly required of each member of the Association, which amount shall be deducted each pay period from each Association member and each non-Association member's compensation and remitted monthly to the Treasurer of the Association.~~

Section 3.

~~The County will not be held liable for check off errors but will make proper adjustments with the Association for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues check off, an updated list of eligible members of the bargaining unit will be delivered to the Association. Such lists shall include all members paying dues in the previous pay period. Such uniform amounts as the Association Treasurer certifies to the County as the monthly dues approved by the members of the Association shall remain as the reasonable amount to be deducted there under.~~

Section 4.

~~The Association agrees to indemnify, defend, and hold the County harmless from and against any and all claims, suits, orders or judgements brought against the County as a result of the County's compliance with the provisions of this Article and to reimburse any fees, costs, or expense incurred by the County in connection with the same. Notwithstanding the foregoing, the County will cover its costs associated with notifying the Association of any such claim. A like amount in lieu of dues will be automatically deducted from employees in the bargaining unit who have not signed an authorization form requesting Association membership dues deduction. It is understood that the like amount in lieu of dues shall only be used as directed by the Constitution and By-laws of the Association and by the majority vote of the membership. Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues or a like amount in lieu of dues deduction.~~

~~Section 5. Any individual employee objecting on bona fide religious tenets or teachings of a church or religious body of which such employee is a member will inform the County and Association of his/her objection. The employee will meet with the representative of the Association and establish a mutually satisfactory arrangement for distribution of a contribution of an amount of money equivalent to regular Association membership dues to a non-religious charity.~~

~~Section 6. The County will not be held liable for check-off errors but will make proper adjustments with the Association for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues check off, an updated list of eligible members of the bargaining unit will be delivered to the Association.~~

~~Such lists shall include all members paying dues in the previous pay period.~~

ARTICLE 25 – WORKERS’ COMPENSATION

Section 1.

All County employees will be insured under the provisions of the Oregon State Workers’ Compensation Act for injuries that arise out of and occur in the course of employment for the County. The County is self-insured for worker²s’ compensation claims. The County and Association acknowledge the right of employees to receive worker²s’ compensation benefits as provided by state law and this Article.

Section 2.

The County will compensate the employee for injuries that arise out of and occur in the course of employment where the claim has been accepted in an amount equal to the injured employee’s regular pay, including any regular additional pay, such as longevity, that the employee was receiving at the time of the injury for up to and including 180 days from the date of injury. This wage continuation provision will continue for up to and including 180 calendar days from the date of injury, and is subject to the following conditions:

- A. The day of injury shall be considered a workday, and the employee will receive ~~his/her~~their normal salary for that day.
- B. The waiting period as stated in ORS 656.210 will be charged to sick leave or other accrued leave if available unless total temporary disability exceeds fourteen (14) consecutive days. Then, worker²s’ compensation covers from the first day.
- C. The employee’s regular pay will be subject to all standard deductions, such as income tax and employee benefits, as required or allowed under Federal and State Law.
- D. While the employee is receiving wage continuation under this provision, ~~he/she~~the employee will continue to receive all other County health and welfare benefits ~~he/she~~the employee was enrolled in at the time of the injury unless prohibited by law, rule, and regulation or provider contract.

Section 3.

After one hundred and eighty (180) calendar days from the date of injury, the Board of County Commissioners retains the discretion to continue payment and benefits beyond that guaranteed under the statutes governing workers' compensation benefits. If the injured employee requests wage continuation beyond one hundred and eighty (180) calendar days from the date of injury, the injured employee will be required to present to the Board of County Commissioners through its designee Human Resources, a physician's statement setting forth the nature of injuries, current condition, and anticipated length of absence or date of return.

After one hundred and eighty (180) calendar days from the date of injury, the employee may elect to use accrued leaves to supplement the difference between worker's compensation benefits and the employee's regular pay (including any regular additional pay).

Section 4.

Full medical and dental insurance coverage shall be provided for employees for a minimum of twelve (12) months from the date of injury as long as employee remains employed during this period. Employees are responsible for any applicable insurance premium cost share as provided for in Article 11. Further coverage shall be at the discretion of the Board.

Section 5.

The County may request the employee to return to modified or light duty, subject to medical release. An injured employee that refuses to return to modified or light duty may be subject to loss of reinstatement rights. (See also Article 37, Light Duty, Section 3.)

ARTICLE 26 - REGULAR PART-TIME EMPLOYEE BENEFITS

Benefits for regular part-time employees covered by this Agreement shall be as follows:

- A. Employees working an average of twenty (20) hours per week shall receive health insurance coverage as if they were full-time employees.
- B. Employees working an average of thirty (30) hours per week shall receive dental insurance coverage as if they were full-time employees in addition to health insurance.
- C. Employees working an average of thirty (30) hours per week shall be covered by the County's life insurance and disability insurance policies in addition to health insurance.
- D. Part-time employees must serve a waiting period two (2) full calendar months consistent with County policy to qualify for the above benefits.
- E. Employees working less than full-time will be eligible for PERS if they meet the requirements of ORS Chapter 237.

- F. Part-time employees will receive seniority, vacation, sick and other accruals prorated based on budgeted FTE.
- G. Employees shall be eligible to receive merit/step increases and time in service for vacation accrual and longevity pay as of the first of the month based on accumulated calendar months of service.
- H. Employees shall receive paid holidays only for those holidays which are observed on days the employee is regularly scheduled to work.
- I. Overtime will only be paid for all authorized work performed in excess of forty (40) hours in any work week or if the employee is required to work over twelve (12) hours on a regularly scheduled work day. The County and employee may also agree to a flexible schedule for a particular work week which does not create overtime obligations unless required by operational need.
- J. All other provisions of this Agreement not specifically modified above shall apply to part-time employees.

ARTICLE 27 - COMPENSATORY TIME OFF

If agreed to by an employee and ~~his~~-their supervisor, compensatory leave may be taken in lieu of pay for overtime. Such leave shall not accrue beyond forty (40) hours.

ARTICLE 28 - PUBLIC EMPLOYEES RETIREMENT SYSTEM

Section 1. Employer “Pick-up” of Employees PERS/OPSRP Contribution.

Eligibility for Public Employees Retirement System (PERS) and Oregon Public Service Retirement Plan (OPSRP) is subject to ORS Chapters 238 and 238A. The County agrees to pay employee’s share of contribution on behalf of employees as set by Oregon legislature.

In the event that during the life of this agreement it becomes impossible for reasons of law, regulation or decisions for the County to pay the six percent (6%) employee contribution to PERS, then that sum shall be contributed on behalf of the employee to a retirement benefit, such as a state retirement account, County deferred compensation plan, or other individual retirement account. The intent of the parties is that the employees will be made whole in terms of the six percent (6%) retirement contribution by the County.

Section 2. Notice of Intent to Retire.

- 1. Employees are requested to provide a ninety (90) day written notice of intent to retire.
- 2. Retire/Rehire program:
 - A. The parties recognize that there can be a large time lag between retirements and hiring new employees to meet operational need. The intent of this program is to improve the efficiency with attrition and maintaining qualified staffing levels. Thus, as soon as the position filled by a rehired retiree is filled by a regular employee, the County may end the employment of the

rehired retiree. The County will attempt to provide two weeks' notice prior to the rehire retire position ending.

- B. For DPSST certified and non-certified, employees who provide at least twelve (12) months' notice, but no more than eighteen (18) months' notice, of commitment to retire under PERS or OPSRP, the County, at its discretion, may offer ~~the employee~~ the opportunity to return to work to employees who have officially retired from the County and submitted their retirement to PERS for a "Rehire Period." The Rehire Period shall be for up to an additional one hundred and eighty (180) calendar days ~~from the employee's retirement date;~~ or an amount of time not extended past December 31, 2024 for employees rehired under Senate Bill 1049 (2019). The County may end the Rehire Period at its discretion at any time. Within thirty (30) days of notice from the employee, the County will give notice to the employee that they are selected for the program. The County's decision to not select an employee for the Retire/Rehire program is not subject to the grievance procedure. An employee who is not selected for the Retire/Rehire program may withdraw their notice to retire within thirty (30) days of the County's notice non-selection and the conditions of the program will not apply to that employee.
- C. Employees selected for the Retire/Rehire program are subject to the following:
- ~~1) Retire/Rehire program not to exceed one hundred and eighty (180) calendar days from the employee's retirement date.~~
 - 1) Employee loses maintains their current seniority upon retirement. Seniority within the employee's assigned job/classification resets to the rehire date.
 - 2) Employee will have no more than ~~five (5)~~three (3) calendar days off between retirement and returning to work to initiate the new employment relationship.
 - 3) Employee will not be eligible to receive Health and Welfare benefits ~~continue on County health insurance under Article 11, including voluntary benefits;~~ however, the County will continue to provide EAP, and Rather, employee may receive Health and Welfare benefits by ~~not~~ enrolling in ~~to~~ the IRMT plan. The County will continue to pay the employee's IRMT contribution during the Rehire Period as set forth in Article 11.
 - 4) Employee will be an Association member with limited benefits:
 - a) Employee will be afforded the rights as provided under Article 20 for alleged disciplinary actions, however, employee retains no rights to grieve discipline or discharge past Step 2 of Article 21, with final decision by the Sheriff. The County may end employment for operational need not related to discipline and layoff and recall

provisions of the CBA and County Code will not apply. If the investigation or grievance process exceeds the employment period, the employment status ends even if the investigation or grievance process is unresolved.

b) Employee may be returned to any previously held classification subject to operational need. If not returned to their classification upon retirement, employee will be paid the step closest to their previous wage. Employee will earn compensation including incentives as applicable for the assigned work. The County, at its discretion, may suspend an employee's specialty assignment.

c) Sick Leave will be earned and used consistent with Oregon Paid Sick Leave law. *(note: FMLA/OFLA would not apply)*

d) Employee is eligible for Holidays as provided by Article 7, ~~as occurring during the one hundred and eighty (180) day period.~~

e) Employee will not earn any additional leave accruals except for two (2) personal leave days banked upon rehire. Such days have no value upon separation of employment. Employee may also request time off without pay subject to supervisory approval.

f) Employee is not eligible for compensatory time accrual.

g) Employee is not eligible for tuition reimbursement.

a)h) Employee is eligible for all terms and conditions of this Agreement unless otherwise provided above.

D. Upon receiving such notice from an individual employee, the County will initiate hiring to adjust for the appropriate staffing level as determined by the County.

E. The County is not precluded from offering work to retirees as a temporary employee.

ARTICLE 29 - LAYOFF

Section 1.

This Article is to apply to all employees covered by this collective bargaining agreement. Where the term "Sheriff" is used, it shall also refer to the "appointing authority" if an employee is in another Department.

The Sheriff may lay off an employee when the Sheriff determines it necessary to abolish a position or that a shortage of funds or work exists. Layoff shall be by specific job classification and shall be in ascending order (bottom to top) of an employee's seniority

while in the classification, as described in this Article for purposes of layoff. An employee shall be given written notice of a pending layoff at least fifteen (15) calendar days before the effective date stating the reasons for the layoff and the fact that an election to displace another employee pursuant to Section 3 of this Article must be made within six working days of receipt of said notice.

Section 2.

Layoffs shall occur in the following manner:

- A. The Sheriff shall determine the specific positions to be vacated.
- B. The Sheriff will notify, in writing, all affected employees and the Association at least fifteen (15) calendar days prior to the effective date of the layoff of all employees in all affected classifications.

Section 3.

Where an employee is laid off, including former bargaining unit members promoted to non-represented positions within the Sheriff's Office, that employee may elect to displace (bump) an employee in another job classification at the same or a lesser pay range provided that the employee is qualified to perform the duties of the position and the employee electing to displace another has a greater seniority as defined below. Layoff and bumping shall occur within a department only.

- 1) For layoff bumping purposes in DPSST certified law enforcement positions, an employee's seniority shall be measured from the date and time they were hired or promoted into the classification into which they are bumping and shall include all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.
- 2) For layoff bumping purposes in non-DPSST certified positions, seniority shall be measured by the date and time of hire by the Sheriff's Office.
- 3) When layoff bumping occurs, the "bumped" employee who is displaced is the employee within the job classification with the least Department seniority, measured from the date and time of hiring or promotion into that classification, including all time as a Department employee in that classification, plus all time as a Department employee in any equal or higher classification, whether in a represented or non-represented classification.

Employees who are reinstated from a layoff register retain previously accrued seniority, not including the time on layoff status while not working for the Sheriff's Office.

For purposes of this Article, for DPSST certified law enforcement classifications, "qualified to perform the duties of the position" means that the employee has previously held the classification with this Department.

If an employee exercises a layoff bumping right to a position where they had not completed the probationary period, they must complete the remaining time in probationary status.

An employee who transferred from a regular-status position as a Jail Deputy to a position as a Deputy Sheriff, or from a regular status position as a Deputy Sheriff to a position as a Jail Deputy, and is then laid off, may elect to displace (bump) an employee in the prior classification previously held, if the employee electing to displace another has greater seniority as defined in this section.

Section 4.

Employees who held training positions as Recruit Deputy Sheriffs or Recruit Jail Deputies and successfully transferred to Deputy Sheriff or Jail Deputy classifications shall be credited with additional seniority for layoff and/or layoff bumping purposes as provided by the following rules:

- (a) For employees who have held positions as Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (b) For employees who have held positions as Recruit Jail Deputy and/or Jail Deputy, seniority for layoff or layoff bumping into these classifications is measured from the earlier hire date in either of these two classifications;
- (c) For employees who have been employed as a Recruit Jail Deputy and/or Jail Deputy prior to being employed as a Recruit Deputy Sheriff and/or Deputy Sheriff, seniority for purposes of layoff bumping into a position as a Recruit Jail Deputy or Jail Deputy includes all time employed in any of those positions. This “blended Seniority” under Section 4(c) of this Article applies only to bumping resulting from layoff, and not to the identification of positions for layoff under Article 29, Section 1. This paragraph applies in a similar manner to employees who have been employed as a Recruit Deputy Sheriff and/or Deputy Sheriff prior to being employed as Recruit Jail Deputy and/or Jail Deputy.

Section 5.

When an employee displaces another employee under the conditions set forth above, the employee taking the position will be paid the rate of pay within the pay range of the employee’s new assignment and classification which most nearly approaches the rate of pay actually earned in the job from which the employee was laid off.

Section 6.

Employees who have been laid off or who have displaced another employee shall be placed on the layoff register, for the classification held at the time of their layoff, in order of layoff seniority including time spent in an equal or higher classification. Reinstatement shall be offered to those employees on the layoff list in descending order from top to bottom of layoff seniority possessed at the time of layoff prior to hiring any new employees. In other words, recall will occur so that the last employee laid off will be the first recalled. An employee’s duration of placement on the layoff register shall not exceed twenty-four (24) months from the employee’s layoff date.

Notice of recall shall be made by certified mail. Employees shall be responsible for keeping the County informed of their correct address. Failure to respond to such recall notice within five (5) calendar days of receipt of the notice shall cause loss of recall eligibility.

Employees recalled shall have accrued but unused sick leave at the time of lay off restored.

ARTICLE 30 - TUITION REIMBURSEMENT

Subject to a maximum of one thousand five hundred dollars (\$1500.00) per employee per fiscal year, the County will reimburse the employees for the cost of books and tuition for the completion of any approved course of study directly related to their job. Courses must be from an accredited institution such as a community college, college or university. Proof of successfully passing an approved course must be submitted prior to reimbursement. Exceptions must be approved by the Sheriff in advance of the course of study.

ARTICLE 31 - INCENTIVE PROGRAM

Section 1. Incentive Schedule.

In order to maintain and improve officers' law enforcement skills, as well as to increase the participation of officers in the life of the community, the County will implement an incentive program consisting of training and community service, Department of Public Safety Standards and Training certification, superior firearms qualification and supervisory certification. The following premiums are paid subject to the conditions of this Article:

INCENTIVES	Monthly Amounts 7/1/2019	Monthly Amounts 7/1/2020	Monthly Amounts 7/1/2021	Monthly Amounts 7/1/2022
DPSST Intermediate Certification or	\$ 42.44	\$ 43.54	\$44.32	COLA
DPSST Intermediate Certification w/Bachelors	\$ 72.11	\$ 73.98	\$75.31	COLA
DPSST Intermediate Certification w/Masters or Ph.D.	\$ 84.85	\$ 87.05	\$88.63	COLA
DPSST Advanced Certification	\$ 93.04	\$ 95.46	\$ 97.18	\$146.00
DPSST Advanced Certification w/ Bachelors	\$158.17	\$162.28	\$165.21	\$250.00
DPSST Advanced Certification w/ Masters Phd	\$186.04	\$190.87	\$194.31	\$287.50
Marksmanship Pay	\$ 42.44	\$ 43.54	\$ 44.32	COLA
Educational ® 75 hrs. annually or	\$134.42	\$137.91	\$140.40	COLA
Educational ® 50 hrs. annually or	\$ 93.04	\$ 95.45	\$ 97.18	COLA
Educational (@ 25 hrs. annually	\$ 46.51	\$ 47.72	\$ 48.58	COLA
DPSST Supervisory Certificate	\$106.07	\$108.83	\$110.79	\$163.00
DPSST Supervisory Certificate w/Bachelors	\$180.34	\$185.03	\$188.36	\$278.00

INCENTIVES	Monthly Amounts 7/1/2019	Monthly Amounts 7/1/2020	Monthly Amounts 7/1/2021	Monthly Amounts 7/1/2022
DPSST Supervisory Certificate w/Masters PhD	\$213.16	\$218.70	\$222.63	\$329.00
Community Service Officers w/AA degree	\$ 42.44	\$ 43.54	\$44.32	COLA
Community Service Officers w/BA degree	\$ 93.04	\$ 95.46	\$97.18	COLA
IAI Certified Crime Scene Investigator (Basic)	\$ 26.39	\$ 27.07	\$27.57	COLA
IAI Certified Crime Scene Investigator (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Investigator (M/phd)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Inter)	\$ 39.91	\$ 40.94	\$41.68	COLA
IAI Certified Crime Scene Analyst (Intermediate w/ Bachelors)	\$ 67.82	\$ 69.58	\$70.84	COLA
IAI Certified Crime Scene Analyst (Intermediate with Masters/PhD)	\$ 79.79	\$ 81.86	\$83.34	COLA
IAI Certified Senior Crime Scene Analyst (Advanced)	\$ 87.51	\$ 89.78	\$91.40	COLA
IAI Certified Senior Crime Scene Analyst (Advanced w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IAI Certified Senior Crime Scene Analyst (Advanced with Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IAI Certified Latent Print Examiner	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner	\$ 87.51	\$ 89.78	\$91.40	COLA
IACIS Certified Forensic Computer Examiner (w/Bachelors)	\$148.76	\$152.62	\$155.37	COLA
IACIS Certified Forensic Computer Examiner (w/Masters/PhD)	\$174.97	\$179.52	\$182.75	COLA
IACIS Certified Mobile Device Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA
IACIS Certified Advance Windows Forensic Examiner	\$ 26.39	\$ 27.07	\$27.57	COLA

~~The above amounts will increase by an amount equal to the pay plan increases provided in Article 12 on July 1, 2018 and July 1, 2019. The above amounts will increase by an amount equal to the pay plan increases provided in Article 12 as noted above.~~

Section 2. Marksmanship Pay.

~~DPSST certified bargaining unit employees members of the Sheriff's Office may participate in the annual firearms marksmanship program.~~ To receive marksmanship pay,

a ~~DPSST certified~~ employee must score a minimum of eighty-five percent (85%) on the annual spring firearms qualification course. The content/criteria of the test will be determined by CCSO Firearms Training Unit, subject to approval by the Undersheriff. The employee may test for marksmanship pay only one time per year and there will be no make-up courses. ~~This restriction is necessary because members will be firing a portion of their regularly issued yearly firearms ammunition.~~ The County shall pay for all authorized fees incurred at the firing range.

An employee who scores a minimum of eighty-five percent (85%) on this qualification will receive additional compensation as described above effective the pay period following qualification. This pay will remain in effect for one year, or until the effective date of the next annual spring firearms qualification whichever is later.

Practice ammunition: DPSST certified employees will be provided six (6) boxes of practice ammunition per fiscal year subject to available supply for use at the CCSO facility, but no more than two (2) boxes per visit. No later than May 15 of each year, the Department will notify the Association if it anticipates a shortage of ammunition. The Department retains the sole discretion to determine if a shortage exists. Upon request by the Association, the parties may meet and confer about an adequate supply of ammunition.

Section 3. IAI and IACIS Certifications.

Effective in the first pay period of the month following execution of this agreement, Employees who use the listed certifications in the regular duties of their classification will receive the monthly values noted above. Employees receiving any DPSST certification are not eligible for any of the below certifications.

Certifications: (inclusive of basic/intermediate/advance and education: see chart Section 31.1)

1. IAI Certified Crime Scene Investigator
2. IAI Certified Crime Scene Analyst or Senior*
(*If receiving Analyst incentive, the Investigator incentive is not paid.)
3. IAI Certified Latent Print Examiner
4. IACIS Certified Forensic Computer Examiner
5. IACIS Certified Mobile Device Examiner
6. IACIS Certified Advanced Windows Forensic Examiner

Section 4. DPSST Certification.

Employees who obtain a DPSST Intermediate Certificate in law enforcement or corrections will be paid additional compensation as described above.

Employees who obtain a DPSST Advanced Certificate in law enforcement or corrections will be paid additional compensation as described above.

Certification pay will commence effective the pay period following submission of a successful application for certification to DPSST.

This incentive pay is not cumulative and members are eligible for one level only.

Section 5. Education Pay.

All employees of Clackamas County Sheriff's Office who are members of the bargaining unit are eligible to participate in Education Pay.

This incentive pay is not cumulative and members are eligible for one level only.

Employees wishing to participate in education pay must receive prior approval of their courses.

Employees will receive ten (10) hours credit for each successfully completed quarter hour of college credit classes.

Education credits will normally be granted for any college training that is job-related. Credits will also be awarded for non-job-related college courses if they are required courses as part of a degree program in a job-related field. Approved jobs related training courses attended during off duty hours will count towards training points.

The Education pay program is separate from the Tuition Reimbursement Program. The fact that a training or college course is approved for training points does not necessarily mean that it will be approved for tuition reimbursement.

Education hours will be compiled by the Training Officer and submitted to payroll prior to June 15 each year. Pay will commence with the first payroll period in July and will continue for a period of one (1) year.

Section 6. Supervisory Pay.

Employees who complete the DPSST Supervisory Certification Program shall be granted additional compensation as described above. This incentive pay is not cumulative employees are not eligible for other DPSST incentive pays.

Section 7. Community Service Officers with AA or BA degree.

Community Service Officers who attain an Associate's degree shall be paid additional compensation as described above. Community Service Officers who attain a Bachelor's degree shall be paid additional compensation as described above. Community Service Officers applying for compensation by way of this Section shall have completed their degree work in a law enforcement field or an approved course of study related to a law enforcement career. This incentive pay is not cumulative and employees are eligible for one level only.

Section 8. Detective and Evidence Technician Incentive Pay Program.

Description. For the classifications of Detective and Evidence Technician, a Detective or Evidence Technician employee may receive the following incentive pay subject to exceeding expectations in yearly evaluations as provided below.

Amounts of Incentive Pay. This is a tiered incentive pay program:

2.5% of base pay for employees in continuous service with the classification between 5 year (60 months) to 10 years (120 months).

5.0% of base pay for employees in continuous service with the classification for over 120 months.

Review Time Period. Incentive pay will be based on previous year employee evaluation as defined below.

Qualification and Yearly Evaluation:

1. Rotation Within Various Units of Detective Division.

Detectives may be rotated through the various units (~~currently Homicide and Violent Crimes Unit (HVCU), Child Abuse Team, and Property Crimes~~) when necessary to suit the needs of the Sheriff's Office. Seniority is still a consideration with regard to shift schedules and days off.

2. Evaluation Ratings Exceeds Expectations.

The standard performance evaluation form will be used to evaluate and document the employee's performance for the year. An employee must receive a ~~specific~~ "Meets" or "Exceeds" ~~Expectations~~ rating on their performance evaluations and have the required time in grade to be eligible to receive the incentive pay.

Detectives or Evidence Technician will be evaluated on the following: report reviews, investigative audits, case reviews, training file contents and supervisory input. Other considerations may include: response (when available) to the needs of the Sheriff's Office while off duty, assisting uniform personnel in the field when on duty and available, closely monitoring dispatch calls for service while on duty and in the field, attending required training (unless excused), and assisting with the training needs of the Sheriff's Office when requested.

Appealing Decisions of "Does not Meet Criteria." If an employee does not qualify for the Incentive Pay Program because ~~his/her~~ their evaluation was below the rating criteria set forth above, then the employee may question the determination and have the opportunity to be heard. Management would typically follow its chain of command in responding to the employee starting with a Lieutenant then up to the Division Commander. The Division Commander's decision is final. The Association and employee agree that the employee has no further avenue for review and cannot use the grievance process. An employee should check with ~~his/her~~ their supervisor midway through ~~his/her~~ their evaluation period and inquire as to ~~his/her~~ their performance.

Changes to Incentive Plan. Any alterations to this plan deemed necessary will only be made through negotiations between the County and the Association.

Section 9. Contract City Detective Incentive Pay.

The Detectives who are assigned full-time to the cities of Happy Valley or the City of Wilsonville shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for the period of time the employee is assigned to that contract city.

In consideration of the additional compensation paid to contract city Detectives, the Sheriff shall have the authority to move said Detectives within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues associated from the move.

Because the Contract Cities Oversight Committee brought forth this issue and the County is only serving as its administrator, the contract cities retain sole discretion to decide whether to continue, modify or cease the incentive pay program. In the event the contract cities decide to modify or cease this incentive pay program, the County will provide the Association with thirty (30) calendar days' advance notice of the contract cities' decision; however, the contract cities' decision is not a subject of bargaining or grievance.

Section 109. Detective Sergeant Incentive Pay and CCITF Sergeant Pay

Sergeants assigned to CCITF shall receive additional compensation equivalent to five percent (5%) of their base pay for the length of their assignment.

Sergeants assigned to the Investigation Division shall receive additional compensation equivalent to six percent (6%) of their base pay for the length of their assignment. However, on the first day of the month after ratification the premium will be reduced to five percent (5%). This incentive pay does not apply to Sergeants assigned to CCITF (*Clackamas Co. Interagency Task Force*).

In consideration for the additional compensation paid to Sergeants assigned to the Investigation Division the Sheriff shall have the authority to move the Sergeants within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

Section 110. Field Training Officer Pay.

Any employee assigned the responsibility of a Field Training Officer or a person supervising a Field Training Officer shall receive premium pay in the amount of ten percent (10%) of the employee's base pay as set forth in the pay plan for the length of the assignment.

The following classifications are eligible for Field Officer Pay:

- a) Jail Deputy
- b) Jail Sergeant
- c) Deputy Sheriff
- d) Sergeant
- e) Detective
- f) Community Service Officer
- g) Evidence Technician

- h) Office Specialist 1 & 2
- i) Any other classification that uses an approved Field Training and Evaluation Program (including the above listed).

Section 121. Bilingual Pay.

Any employee who is fluent in Spanish, Russian, American Sign Language, or a language agreed upon by the CCPOA and the Sheriff and in the course of the employee's duties uses that language shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan.

Proficiency will be established by a Human Resources approved testing process and/or by the FBI. All costs for initial testing, documentation and retesting shall be borne by the Sheriff's Office. Employees may be required to recertify fluency every five (5) years.

Section 132. Motor Deputy Pay.

Employees may be assigned to Motorcycle Patrol. In consideration of the additional specialized training and experience for employees working in the assignment of Motorcycle Deputy, employees shall receive premium pay in the amount of five percent (5%) of the employee's base pay as set forth in the pay plan for that period of time that the employee is assigned as a Motor Deputy.

In consideration of the additional compensation paid to Motor Deputies, the Sheriff shall have the authority to move the Motor Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

Section 143. Canine Assignment and Premium Pay.

Deputies may be assigned to Canine duties at the discretion of the Department. It is anticipated that Canine Deputies will provide maintenance of their assigned dogs, including feeding, grooming, and other normal dog maintenance responsibilities, outside the Canine Deputy's normal work hours. The parties have evaluated the time needed for routine care and have determined that four (4) hours per week [thirty-four (34) minutes a day] is reasonable and sufficient to meet those responsibilities. In consideration of this activity, Canine Deputies shall receive one (1) hour release time per working day when on a 4/10 schedule for these duties. If the work schedule differs from a 4/10 schedule, the Deputy will receive the equivalent of 4 hours per week of release time divided into the workday schedule. Canine Deputies may also be required to work a full week schedule and would be eligible for overtime for routine care.

Canine duties require specialized training and experience. Deputies assigned to Canine Patrol will receive an additional incentive of five percent (5%) base pay per pay period during the period of the assignment.

In consideration of the additional compensation paid to Canine Deputies, the Sheriff shall have the authority to move the Canine Deputies within the Sheriff's Office as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move.

Section 154. SWAT/HNT, CERT, EDU/Bomb, Dive Rescue Team.

Employees assigned to SWAT/HNT, CERT, EDU/Bomb, and Dive Rescue Team are eligible for additional premium pay.

Effective in the first pay period of the month following execution of this agreement, employees serving as a qualified member in good standing will receive a monthly incentive of ~~\$50~~54.16. The Sheriff shall have the authority to discontinue employee participation in these programs as needed for business reasons without a demand from the Association to bargain the decision or any pay issues from the move. The above amounts will increase by an amount equal to the yearly pay plan increases provided in Article 12 on July 1, 2021 (\$55.13) and July 1, 2022 ~~on July 1, 2018 and July 1, 2019~~.

Section 16. Forensic Artist Collateral Duty Premium Pay.

Any employee assigned the collateral duty of a Forensic Artist shall receive premium pay in the amount of one percent (1%) of the employee's base pay as set forth in the pay plan for the length of their assignment.

The Sheriff retains the right to determine the appropriate number of Forensic Artists from the qualified CCPOA members. In consideration of the additional compensation paid to the Forensic Artist(s), the Sheriff shall have the authority to end the collateral duty assignment without a demand from the Association to bargain the decision or any pay issues.

ARTICLE 32 – EQUIPMENT

Section 1. Repair or replacement of personal property or equipment.

The County shall repair or replace an employee's personal property or equipment which the County requires the employee to have while working for the County and which is lost, damaged or stolen beyond usable or safe operating quality in the line of duty except as such is due to the employee's negligence.

Section 2. Vests.

The County shall provide DPSST certified employees with either a vest rated at Threat Level IIA (with sharp object protection) or Threat Level IIIA flexible (with side panels) at the employee's option, and the County will provide up to \$125 for upgrades at the time of replacement or new purchase. The vests shall be replaced per the manufacturer's warranty of performance guidelines (currently 5 years), ~~and the County will provide up to \$125 for upgrades at the time of replacement or new purchase.~~ So long as the vest satisfies the required threat level, the County shall have discretion in selecting or approving vests including matters such as the supplier, price, make or model of the vests. If a qualified employee wants a vest not selected or approved by the County, it shall be the employee's responsibility to pay any differences beyond what the County will pay.

Section 3. Equipment Reimbursement.

Effective January 1, 2016, the County will reimburse DPSST certified uniformed employees in an amount up to ninety (90) dollars per calendar year for the purchase of belts, holsters, footwear, gloves, flashlights, handcuffs, radio equipment, vest upgrade,

duty belt gear and approved uniform apparel with insignia that is not provided by the Sheriff's Office (hats, uniform sweaters, external vest carriers and mock turtle necks) to be used in carrying out their assigned duties. The employee shall provide to the County proof of purchase for the equipment items to receive the reimbursement.

Requests for reimbursement with original receipt(s) attached shall be submitted between January 1 and January 15 for equipment purchased in the previous calendar year.

ARTICLE 33 - CLEANING AND CLOTHING ALLOWANCE

Section 1. Uniform Cleaning.

DPSST Certified employees and Community Service Officers required to wear a uniform shall be paid \$20 per month as a cleaning allowance.

Section 2. Clothing Allowance.

Detectives shall receive a uniform allowance of \$600 per year, which shall be paid at a rate of \$50 per month on the first paycheck of each month. Detectives do not receive the uniform cleaning allowance.

ARTICLE 34 - LEGAL DEFENSE FUND

Legal Defense Plan: For DPSST certified employees, the County will contribute towards the PORAC Legal Defense Plan that provides each of its members with an attorney as a direct result of criminal charges, investigation of use of deadly force, or a grand jury appearance against the member arising out of the member's involvement in the scope of regular performance of his or her duty as an employee for the County.

- a. Effective the month following execution of this agreement ~~and the selection of the legal defense plan,~~ the County will contribute up to ~~\$6,004.50~~ per month toward the premium for each DPSST certified officer paid by reimbursement of invoice provided by the Association for the "PORAC" Plan. Invoices by the Association may be quarterly.
- b. The Association will provide a complete legal defense plan description to the County and advanced written notice to the County of any changes to the plan. Substantive changes in plan benefits are subject to notice and bargaining under ORS 243.698.
- c. The County recognizes that it is not entitled to the work product of the attorneys involved in this program. The County recognizes there exists an attorney client privilege between the attorney and the member.

ARTICLE 35 - SAVINGS CLAUSE

Should any Article, Section, or portion thereof, of this Agreement be determined to be unlawful and unenforceable by statute or constitutional amendment, by administrative rule or federal regulation or by any Court of competent jurisdiction or ruling by the Employment Relations Board, such determination shall apply only to the specific Article, Section or portion thereof, directly specified in the determination, the County may suspend

the invalidated Article, Section or portion thereof and, the parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof under ORS 243.698.

ARTICLE 36 - ASSOCIATION RIGHTS

Section 1. Association Executive Board.

Employees selected by the Association to act as Association representatives for grievance processing and other labor matters, shall be known as the Association Executive Board. The names of employees so designated shall be certified in writing to the County by the Association.

Section 2. Executive Board Release Time.

The Executive Board members of the Association may investigate and process grievances and other labor related matters during working hours, within reasonable limits, and without loss of pay, providing it does not conflict with Sheriff's Office operations. In order to ensure that there is no conflict with Sheriff's Office operations, an absence from duty for the purposes of investigating and processing grievances or other labor related matters, must be approved in advance by a Lieutenant.

Executive Board members may attend regular Executive Board meetings during working hours without loss of pay. Regular Executive Board meetings are typically scheduled for one hour on a monthly basis, however, meetings may last up to 90 minutes due to the press of business. The Association may also from time to time schedule a second regular meeting in any individual month. The Association will provide notification to the County of the date and time of Executive Board meetings held during working hours.

The Association will exercise care to cooperate with the County to make sure there is no undue disruption to County operations caused by the operation of this section.

To accommodate the availability of the Association President to perform Association business, at the mutual agreement of the Association President and the Sheriff, the Association President will be assigned to a shift which includes a majority of its hours Monday through Friday, 8:00 a.m. to 5:00 p.m. Prior to the commencement of the shift bid, the President will meet with management to determine the President's shift assignment.

The Association shall have the right to have a bulletin board and a mailbox in each facility occupied by the Sheriff's Office.

Section 3. Association Negotiating Committee.

Employees selected by the Association to act as Association representatives for negotiations, shall be known as the Association Negotiating Committee. The names of employees so designated, up to a total of five (5) employees, shall be certified in writing to the County by the Association.

Section 4. Negotiating Committee Release Time and Paid Bargaining Time.

Negotiating Committee members may attend negotiation sessions and caucuses held at the same site up to one hour before and during the sessions without loss of pay if held during

working hours. If such negotiation sessions or caucuses are held outside of the member's working hours, the member will be paid at the member's regular rate of pay including overtime if applicable. Paid time or release time for negotiating sessions or caucuses will include all time in mediation sessions.

Section 5. County- Association Meetings.

The County or its designee(s) may meet at mutually convenient times with the Association Executive Board, Negotiating Committee or Association officers. All meetings between the County or its designee(s) and the Association shall be held during working hours whenever possible and without loss of pay. The purpose of the meetings may be to discuss issues which would improve the relationship between the parties.

ARTICLE 37 - LIGHT DUTY

Section 1.

Employees have an ongoing responsibility to notify their supervisor if they are unable to fully perform their regular duties due to injury or illness. The nature of DPSST certified law enforcement positions requires that each officer be physically able to assist fellow officers in time of need. Employees are not required to inform their supervisor of confidential medical information, only the limitations that have occurred because of a medical condition. The County may verify medical information but must do so in a manner that protects medical confidentiality and complies with Federal law (HIPAA) and EPP #42 (Personnel Records).

Section 2.

Training, and specifically defensive tactics training, is an integral part of regular job duties for DPSST certified law-enforcement personnel. An injury may require limited participation in defensive tactics training. The practice sometimes referred to as "tape and play," is a mutually accepted practice that enables an employee to participate in limited defensive tactics training while simultaneously identifying injuries that must be protected from aggravation during the training activity. Where no physical participation in defensive tactics training is possible due to the extent of illness or injury, mere observation of the training is not an effective means of participation. Employees will be expected to participate in the next scheduled training after their illness or injuries have resolved.

Issues of fitness for duty, including fitness for defensive tactics training, cannot be resolved without the involvement of trained medical professionals who are both knowledgeable about the extent of illness/injury and the specific job duties or training activities of the individual. Questions of fitness for duty will be referred to medical professionals using the County's standard procedures. Fitness for duty issues (other than minor injuries) should be addressed in consultation with Human Resources, on an ongoing basis and prior to the day of scheduled defensive tactics training.

Section 3.

The rigorous nature of job duties in DPSST certified positions at the Sheriff's Office creates the need for additional light duty opportunities, over and above the standard County policy limiting light duty to ninety (90) days except in unusual circumstances (EPP #9). For this reason, an additional ninety (90) days of light duty will be available to employee

in DPSST certified positions [for a total of one hundred (180) days], upon application to the Sheriff and his approval of such additional light duty. Approval will be contingent on continued available light duty. The Sheriff will grant the additional light duty where (1) it appears to be medically necessary and (2) there is a reasonable probability that the additional light duty will allow the employee to return to regular duty. Light duty for DPSST certified personnel in the Sheriff's Office will be limited to one hundred and eighty (180) days total, except in unusual circumstances to be determined at discretion of the Sheriff.

ARTICLE 38 - DEPUTY MEDICAL EXAMINERS, DISASTER MANAGEMENT DEPARTMENT, AND DISTRICT ATTORNEY INVESTIGATORS

Section 1. Application of Article.

This Article shall apply to all Deputy Medical Examiners (DMEs) including the Senior Deputy Medical Examiner, the Strategic Program Coordinators in the Disaster Management Department, and the Investigators in the District Attorney's Office.

Section 2. Workweek for DMEs.

DMEs will work a regular rotating schedule of forty-eight (48) hours on duty, spread over three (3) calendar days, and ninety-six (96) hours off duty. In each twenty-four (24) hour period, twenty (20) hours will be considered on duty, with four (4) unpaid hours for rest periods. For payroll purposes, this workweek will be considered as consisting of forty (40) standard paid hours. Each forty-eight (48) hour schedule begins at 1800 hours when the DME arrives at the office to retrieve their County vehicle.

During each forty-eight (48) hour period, the DME on duty is required to be in the office from 0700 to 1800 hours each day. During office hours the DME is responsible for taking three (3) separate ten-minute (10) rest breaks and one (1) separate paid thirty (30) minute meal period.

In addition to the above office hours, DMEs are also required to attend monthly staff and monthly case review meetings, which may or may not occur during their regular forty-eight (48) hour schedule. If such meetings do not occur during a DME's regular scheduled hours, their attendance will be paid at the regular base rate up to forty (40) hours in a work week, and then at the overtime rate thereafter. If such meetings occur during a DME's regular scheduled hours, and a DME cannot attend the Staff Meeting/Case Review (for non-work-related reasons), with the prior approval of management, they may be required to use appropriate leave time or may flex their schedule.

The County and the Association agree that either party may terminate a schedule created under this Agreement at any time for any reason upon thirty (30) days' written notice to the other party. The DMEs will then revert to a shift schedule established by the Disaster Management Department.

If a DME can document that they have been engaged in field work duties, inclusive of office time and/or monthly staff or case review meetings for twenty (20) hours without breaks or meal periods, they shall be entitled to be paid overtime at the overtime rate as outlined in Section 8 below for each hour worked in excess of twenty (20) up to twenty-

four (24). If such time crossed into their next scheduled twenty-four (24) hour work period, which begins at 1800, they shall return to straight time.

A DME must take an eight (8) hour rest period after their forty-eight (48) hour on duty period prior to working overtime, unless pre-approved by management. All overtime must be pre-approved by management. If a case comes in within three (3) hours prior to the end of a DME's shift, management, in discussion with the DME, will decide who will be assigned the case.

The Chief Deputy Medical Examiner will take calls and complete that investigation during ~~his/her~~their shifts when the assigned DME for that shift is on leave or is working another case and cannot respond.

For payroll purposes, the workweek begins Saturday at midnight and ends Friday at 11:59pm.

Section 3. On-Call for DMEs.

When a DME is on approved leave, the hours not covered by the Chief Deputy Medical Examiner's regularly scheduled hours will be offered as on-call duty to the remaining DMEs based on seniority, with the most senior employee being offered first. See also Section 7.

Upon assignment of on-call status, DMEs will receive one (1) hour regular rate of pay for every six hours of on call status, or the equivalent as prorated for duration of the assigned status. If the DME is required to respond to a call, overtime will apply as provided by this Article.

Employees' assigned on-call status are required to be readily available to report to work within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time. While on-call, DMEs will be required to carry and respond to cellular phone or phone calls.

Section 4. Call Back Pay for DMEs.

DMEs who are called to physically report to a worksite outside of their regular forty-eight (48) hour schedule (that is, hours outside of a scheduled shift) will be paid for actual time worked, in fifteen-minute increments, with a minimum of two (2) hours at the rate of pay as outlined in Section 8 below.

Actual time worked during call back hours will be paid at the rate of pay as outlined in Section 8 below, except phone call pay as set forth in Section 5 and Section 8 below. The overtime rate will be paid only up to the start of the regular schedule.

Section 5. Phone Call Pay for DMEs.

DMEs who are on-call and who answer work-related phone calls after work hours will be paid for actual time worked at the rate of pay as outlined in Section 8 below. If the phone

call is fifteen (15) minutes or less, the DME shall be paid for fifteen (15) minutes at the rate as outlined in Section 8 below.

Section 6. Leave Hours.

Usage: Use of a day's vacation will consist of twenty (20) hours per day. Use of a day's Sick leave will consist of twenty (20) hours per day. Use of a Holidays will be paid at twenty (20) hours per day. Sick leave hours taken in less than a one-day increment will be hour for hour to the ¼ hour.

Leave accruals are consistent with the other Articles of this contract.

Section 7. Chief Deputy Medical Examiner.

It is recognized that the County may rely on the Chief DME for after hour phone calls, pager, or electronic messages. However, when there is only one DME on shift and that DME is absent from work, the Chief DME will offer any call-back opportunities outside the Chief DME's regularly scheduled hours to the remaining bargaining unit staff on a seniority basis before performing the work himself or herself.

Section 8. Rates of Pay for DMEs.

It is recognized that due to the non-standard schedule that is worked by the Deputy Medical Examiners, the following formulas will be applied to their rate of pay:

- a) Use or payment of the following accrued paid leaves: On-call, Vacation, Sick, Holiday, Personal Day, Bereavement, and Training shall be paid at the regular rate of pay x 1.23075.
- b) Work performed for Call Back, Phone Call Pay, and overtime shall be paid at the regular rate of pay x 1.846125.

Historical note: These rates of pay were specifically negotiated from a change in yearly scheduled hours from (2400 to 2080) and reflect a conversion of equitable value based on a previous yearly work schedule.

Section 9. On-Call for Strategic Program Coordinators in Disaster Management.

Strategic Program Coordinators in the Disaster Management Department designated in writing to be on-call shall receive one (1) hour of pay at the regular rate of pay for each eight (8) hours on-call. If called back to work, they shall be paid at the rate of one and one-half times (1.5) their regular rate of pay, with a two (2) hour minimum. Employees assigned to be on-call must be readily available to report to duty within 30 minutes. Readily available includes that the employee has not consumed any intoxicant while on-call consistent with policy. Failure to comply with these requirements may result in disciplinary action. On-call status is not payment for hours worked and is not considered compensable time.

Section 10. Strategic Program Coordinators in Disaster Management Work Hours.

Bargaining unit employees working full-time within classifications under the direction of the Disaster Management Department work a regular schedule of either five (5) days a

week with eight (8) hours shifts or four (4) days a week with ten (10) hour shifts at the discretion of the Department Director.

Full time employees earn overtime consistent with Article 13. Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

Section 11. District Attorney Investigators Work Hours.

Bargaining unit employees working full time within classifications under the direction of the District Attorney's Office work a regular schedule of either five (5) days a week with eight (8) hour shifts or four (4) days a week with ten (10) hour shifts, at the discretion of the District Attorney.

Bargaining unit employees working part-time within classifications under the direction of the District Attorney's Office work a regular schedule of two (2) or three (3) days a week with ten (10) hour shifts, at the discretion of the District Attorney. Part-time employees may alternatively be assigned a regular work schedule of four (4) or five (5) days a week with no more than ten (10) hour shifts on any particular day, for total regularly scheduled work week hours not to exceed thirty (30) hours, at the discretion of the District Attorney.

Full-time employees earn overtime consistent with Article 13 and double time consistent with Article 15.5(b). Part-time employees are subject to Article 26.

Leave accruals are consistent with the other Articles of this contract.

ARTICLE 39 – EMPLOYEE ASSISTANCE PROGRAM/EAP

The Sheriff or designee may, with cause, order any employee to consult with the Employee Assistance Program (EAP) counselor as necessary. The results of the consultation shall remain confidential except that the EAP will contact a Human Resources Integrated Disability Analyst to confirm the employee's consultation. The appointments will be on compensable time.

ARTICLE 40 - TRANSFERS

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of the Request to Voluntarily Transfer.

ARTICLE 41 – TERMINATION

Section 1.

Except as otherwise provided, this agreement shall become effective as of the date it has been ~~executed~~ ratification ratified by both the County Board and the Association membership and shall remain in full force and effect until the 30th day of June, ~~2023~~2020 and until a subsequent contract is negotiated and executed by the County and Association. This Agreement shall automatically reopen on March 1, ~~2023~~2020 for negotiations.

Section 2.

This Agreement may be amended at any time by mutual agreement of the Association and County; such amendments shall be in writing and signed by both parties.

IN WITNESS THEREOF, the parties hereto set their hands thus _____ day of _____, ~~2018~~2021.

FOR THE UNION:

FOR THE COUNTY:

Stephen Steinberg
President, CCPOA

~~Jim Bernard~~Tootie Smith
BCC Chair

Anil Karia
Attorney

Mary Raethke
Recording Secretary

~~Angie Brandenburg~~Craig Roberts
Sheriff

~~Matt Ellington~~Michael Copenhaver
Undersheriff

~~Chris Hoy~~Jenna Morrison
Chief Deputy

~~James Rhodes~~Lee Eby
Captain

Jeff Smith

Captain

Eric Sarha
HR Deputy Director

Kyle Abraham~~Steven Schuback~~,
Chief Negotiator—~~Peek~~, Barran Liebman,
LLP~~Rubanoff, Hatfield~~

APPENDIX A
CLACKAMAS COUNTY SHERIFF'S OFFICE REQUEST
TO VOLUNTARILY TRANSFER

NAME:	(LAST)	(FIRST)	(MI)
EMPLOYEE ID:			
CURRENT CLASSIFICATION:	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		
REQUESTED CLASSIFICATION:	<input type="checkbox"/> Jail Deputy (121) <input type="checkbox"/> Deputy Sheriff (103)		

Employees who wish to transfer between Jail and Patrol may do so upon successful completion of the recruitment process and submission and acceptance of this Request to Voluntarily Transfer.

In order for this request to be considered, the employee must meet the following requirements:

- Completed 18 months as a Jail Deputy (121) or Deputy Sheriff (103) level.
- Current (within the preceding 12 months) Sheriff's Office performance appraisal on file which rates employees' performance as meets or exceeds standards in all areas. Please attach performance appraisal to this request.
- No disciplinary action on file with the last 24 months.

If my request to voluntarily transfer is approved, I understand that my employment status will change in the following ways:

- While in training and performing work described in the Recruit classification indicated above, I will be placed into the Recruit classification identified as Deputy Sheriff, Recruit or Jail Deputy, Recruit Employees will maintain their current pay and merit step schedule from transfer.
- My training (DPSST/FTEP/Other training requirements) will be completed within 12 months unless extended by Division Commander.
- If moving from Deputy Sheriff, to Jail my new position will be a Jail Recruit maintaining my current pay.
- If moving from Jail to Deputy Sheriff, my new position will a Deputy Sheriff Recruit maintaining my current pay.
- My seniority will be determined in accordance with the POA Collective Bargaining Agreement (by classification in the new position).

- While in training, during my probationary period of 365 days, I may make a good faith request to be reappointed to my previous classification for reasons other than misconduct or discredit on my employment record. I will be returned to a vacant position in my former classification at my previous Step.

If, while in training during my probationary period of 365 days, the Sheriff or designee determines my performance is not meeting established standards, I will be returned to a vacant position in my former classification at my previous Step.

Employee	Date
Supervisor	Date
Undersheriff	Date

If request is approved by Sheriff's Office management, please attach completed Personnel Action Form and submit packet to Human Resources.

ADDENDUM 1 – DRUG AND ALCOHOL TESTING POLICY

**Clackamas County Sheriff's Office
Peace Officers Association Employees**

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5.31 DRUG AND ALCOHOL POLICY

Clackamas County Sheriff's Office

5.31.1 POLICY STATEMENT

The Clackamas County Sheriff's Office (CCSO) is strongly committed to providing a safe and drug-free workplace.

The CCSO recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome an alcohol or drug dependency problem (see "Employee Assistance Program and Self-Referral").

The Drug and Alcohol Testing Policy is intended to be consistent with and enhance the Clackamas County Employment Policy and Practice #5 - Drug Free Workplace Act and Policy Proclamation.

5.31.2 EDUCATION AND TRAINING

The CCSO will distribute information to employees regarding the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; drug and/or alcohol counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

At the time of hire, new employees will receive a copy of the Drug and Alcohol Policy, which informs them of their responsibilities with respect to compliance with this Policy.

Persons who may be required to make "reasonable suspicion" recommendations or determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes each for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase proficiency.

5.31.3 EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL

Any employee may voluntarily request assistance in dealing with a personal drug and/or alcohol problem through the Employee Assistance Program (EAP) or other acceptable treatment program. Utilization of the EAP is confidential and an employee's utilization of the EAP will not be made known to the Sheriff's Office or the County unless the employee voluntarily chooses to share that information. However, voluntary self-referral for alcohol and/or illegal drug use is not in itself a "safe haven." The guidelines listed below will apply to self-referrals.

- A. Any employee not currently under personnel investigation who voluntarily requests assistance in dealing with a personal alcohol and/or drug problem, may do so without jeopardizing his or her employment, if the alcohol and/or drug of abuse was originally prescribed to, or legally obtained by the employee, but was later abused by the employee. For the purpose of this section, a personnel investigation commences when the Sheriff's Office begins collecting information that leads to the employee being instructed to report for drug and/or alcohol testing.

- B. Participation in the EAP or other acceptable treatment program will not, in itself, jeopardize an employee's job, and successful treatment will be viewed positively. However, participation in the EAP or treatment program will not prevent the CCSO from imposing discipline for conduct that occurs in conjunction with alcohol and/or drug use in violation of Sheriff's Office Policy, and will not relieve an employee from the responsibility to perform assigned duties safely and at a satisfactory performance level.

5.31.4 DRUG EVALUATION; LEAVE OF ABSENCE

An employee may be required to undergo an evaluation by a Substance Abuse Professional (SAP) approved by the Sheriff's Office if he or she is involved in an alcohol and/or drug related incident on or off-duty. This evaluation will determine the extent of any alcohol and/or drug problem and the appropriate treatment. The employee may then be required to participate in, and successfully complete, an alcohol and/or drug education and treatment program as recommended by the SAP in lieu of disciplinary action, as set forth in a Last Chance Agreement. Any cost of such an evaluation not covered by the employee's medical insurance shall be paid by the Sheriff's Office. The cost of the substance abuse treatment will be the responsibility of the employee if not covered by the employee's insurance. Substance abuse evaluation and treatment will be in addition to any disciplinary action taken.

Absences due to alcohol and/or drug abuse evaluation or treatment may be covered by an employee's sick leave or vacation leave. If no such paid leave is available, an unpaid leave of absence may be used according to the County's regular Policy for unpaid leave of absence.

Return to duty, after an employee has been on leave required by this Policy for evaluation or treatment of an alcohol and/or drug problem, will be allowed only in compliance with the recommendations of the SAP.

5.31.5 PRESCRIPTION AND OVER-THE COUNTER MEDICATIONS

Prescription and over-the-counter medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Employees are prohibited from reporting to work, working or returning to duty with medications that could reasonably be expected to impair their ability to safely perform their job duties. Employees are also prohibited from reporting to work with medications containing controlled substances in accordance with section 5.31.6. Employees should ask their physicians for specific instructions as to how much medication they should take, what combinations of medications they should take and when they should take medications to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Employees must report the use of medically prescribed drugs or other substances which could reasonably be expected to impair job performance. It is the employee's responsibility to determine from their physician whether the prescribed drug could reasonably be expected to impair his or her job performance, including the ability to operate a motor vehicle. An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication(s) with his/her doctor in relation to job duties; the type of medication(s); beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with Sheriff's Office management will then determine whether to

require written medical authorization to work from a prescribing health care practitioner or if any other actions are necessary.

Management will restrict access to medical information to the DER, the Sheriff, Undersheriff or person appointed to fulfill the duties of the Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto County property/premises, including vehicles must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

“Medical and Recreational Marijuana”

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor and certain conditions have been met and for limited recreational use, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card or recreational use that complies with state law.

In addition, possession of marijuana on County property is grounds for discipline up to and including dismissal.

5.31.6 PROHIBITIONS

The following conduct is prohibited:

- A. Buying, selling, consuming, distributing or possessing unlawful drugs or alcohol while working or engaged in work activities on behalf of the County, or while on County premises or in County vehicles, except as necessary in the performance of duties (undercover operations, confiscated evidence, etc.)
- B. Reporting for work, working or returning to duty with drugs or alcohol present in the body at the levels set forth below. For the purpose of this Policy, “drugs” include all controlled substances regulated under the federal Controlled Substances Act.
- C. Failing to promptly report arrests, convictions and/or plea-bargains for an alcohol or drug-related criminal offense to the Undersheriff or his/her designee, irrespective of the jurisdiction where such action was taken.
- D. Refusal by an employee to submit a urine specimen and/or breath alcohol sample when required by this Policy will have the same consequences as a positive drug and/or alcohol test result (see “Discipline” section). It will warrant immediate removal of the employee from duty.

E. Failing to comply with directives regarding enforcement of this Policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered samples; obstructing the testing process and failing to comply with rehabilitation conditions imposed by the County or rehabilitation counselors pursuant to this Policy.

F. Engaging in any other violation of this Policy.

Positive Test Levels for Drugs and Alcohol

A positive drug test result is defined as the detection of any one or more of the substances and/or metabolites of the substance at levels set forth by the DOT¹ at the time of testing, which are currently listed in the table shown below:

Substance or Class	Screen Cut-off	Confirmation Cut-off
Amphetamines	500 ng/mL	250 ng/mL
Benzodiazepines	200 ng/mL	200 ng/mL
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Methadone	300 ng/mL	200 ng/mL
Opiates <i>Codeine/Morphine</i> <i>Hydrocodone,</i> <i>Hydromorphone,</i> <i>Oxymorphone</i> <i>Fentanyl</i>	300 ng/mL	2000 ng/mL 150 ng/mL **LOQ 2 ng/mL
<u>Codeine/Morphine</u>	<u>2000 ng/mL</u>	<u>2000 ng/mL</u>
<u>Hydrocodone/Hydromorphone</u>	<u>300 ng/mL</u>	<u>100 ng/mL</u>
<u>Oxycodone/Oxymorphone</u>	<u>100 ng/mL</u>	<u>100 ng/mL</u>
6 Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
PCP	25 ng/mL	25 ng/mL

** Limit of Quantity

An employee will be considered in violation of prohibitions against reporting to work or working with alcohol in his/her system if his/her breath tests .01 g/210L or higher. A separate test, as provided by 5.31.10 Breath Alcohol Testing B2, must be conducted to enforce the .01 or greater BAC standard.

It is not the intent of this Policy to test for medications that are lawfully prescribed by a healthcare provider and used in accordance with the prescription. Employees who are taking medications, including medications containing controlled substances, should refer to the “Medications” section above for an explanation of their obligations. See 5.31.5.

Employees who engage in any prohibited conduct may be subject to discipline, including discharge.

¹ <https://www.transportation.gov/odapc/part40/40-87>

5.31.7 CALLBACK DUTY

It is recognized that employees may be recalled to duty during normal off duty hours. When operational need dictates the necessity to recall these employees, caution and good judgment must be exercised. The employee is required to notify the supervisor requesting the callback of the side effects of any prescription ~~drug~~ or over-the-counter medication and, if requested, the name of the medication, as well as that could impair his/her ability to safely perform job duties and to receive the supervisor's approval before responding to the callback. Similarly, employees who have consumed alcoholic beverages within four (4) hours of a requested callback or, for any reason, believe they could be impaired by the consumption of alcohol, are required to notify the supervisor and obtain approval before responding to the callback.

5.31.8 TYPES OF DRUG AND ALCOHOL TESTING REQUIRED

The following are occasions for drug and alcohol testing under this Policy:

Reasonable Suspicion Testing

An employee may be required to submit to a drug and/or alcohol test upon reasonable suspicion that the employee has violated the prohibitions of this Policy concerning alcohol and/or controlled substances. The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, ~~or~~ body odors of the employee or other articulable observations of an employee's condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Poor attendance or tardiness alone or in combination do not constitute reasonable suspicion. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that supports the violation of Policy prohibitions.

The "reasonable suspicion" behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the drug and/or alcohol test may rely on the observation and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any "reasonable suspicion" incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. A negative dilute result is unsatisfactory on a reasonable suspicion test for drugs. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail. However, employees remain subject to discipline up to and including discharge, for giving intentionally altered samples.

Employees will have access to union representation if requested at every step of the “reasonable suspicion” testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

Return to Duty and Follow-up Testing

Unless the employee is discharged, CCSO shall require return to duty and follow-up testing as recommended by the SAP when an employee has engaged in prohibited drug or alcohol-related behavior or violation of the prescription medication provisions of this Policy. A negative alcohol or drug test is required prior to return to duty and at least six (6) unannounced follow-up tests are required during the twelve (12) months following return to duty. Any recommendations by the SAP shall be followed, but follow-up testing may continue for no longer than sixty months following return to duty.

Please refer to “Return to Duty Procedures” and “Disciplinary Action and Procedures” for additional information.

5.31.9 COSTS OF TESTING

The County will be responsible for payment of all reasonable suspicion, return to duty, and follow-up tests that are required by the County.

The employee will be responsible for payment of any requested split tests or other tests that he/she voluntarily undergoes without being required to do so by the County. The County will initially pay for the test and then collect reimbursement from the employee.

5.31.10 DRUG AND ALCOHOL TESTING PROCEDURES

Testing procedures for all employees are governed by the same standards as apply to commercial driver license holders under federal law, with the exception of forms required by the United States Department of Transportation (DOT) for CDL drivers. These standards include, but are not limited to, those governing sample acquisition, the chain of custody, laboratory selection, testing methods and procedures, and verification of test results.

Drug Testing:

- A. Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- B. If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the

employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test as outlined in 49 CFR 40.193.

- C. Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.
- D. When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Prohibited Conduct”).

Breath Alcohol Testing:

- A. Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- B. A positive test will be confirmed as follows:
 - 1. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
 - 2. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted as described in 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- C. If the result of the confirmed breath alcohol test is positive, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the Designated Employer Representative.
- D. Under this Policy, an employee with a confirmed positive breath alcohol test at the levels set forth in the “Prohibited Conduct” section of this Policy shall be considered to be in violation of this Policy.

5.31.11 DRUG TEST RESULTS REVIEW

Drug test results on an employee which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO. A confirmed positive test does not automatically identify an employee as having used drugs in violation of this Policy. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the DER.

Medical Review Officer Reporting Options and Employer Actions

- “Negative” – self-explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the

DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test”.

- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.
- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for reasonable suspicion, return to duty or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., reasonable suspicion, return to duty or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test as outlined in this Policy.
 - Immediately remove employee from duty; and
 - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
 - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

MRO Verification Without Notifying the Employee

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive, adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO; and
- The MRO has successfully made and documented a contact with the employee and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the entire test.

Communication of Results

The MRO or his/her designated representative will report test results ONLY to the County’s DER who shall notify either the Sheriff, Undersheriff or person appointed to fulfill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance and other information, as necessary for the County to determine whether the employee has violated this Policy.

Employees may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

This policy shall not limit either the County or the Association from obtaining and sharing information, as they deem necessary, to respond to grievances and other legal actions or disclose information and documents, as compelled by law.

5.31.12 DISCIPLINARY ACTION

- A. Any employee found to be in violation of this Drug and Alcohol Policy will be placed on administrative leave pending the results of testing and/or investigation, and is subject to discipline, up to and including discharge. Violations of this Policy may differ in terms of seriousness, the employee’s prior record of violation and/or compliance and other factors consistent with “just cause” obligations. Employees may result in:
- Verbal and written reprimands
 - Suspension or demotion
 - Termination of employment
 - Last chance agreements in lieu of termination

The CCSO may also initiate a criminal investigation and prosecute.

- B. Employees who have voluntarily requested assistance concerning drug and/or alcohol problems and/or voluntarily entered into drug or alcohol evaluation and treatment programs shall have their actions taken into consideration as set forth in section 5.31.3.
- C. Positive Alcohol or Drug Test. Positive alcohol and drug tests are considered a serious infraction and will generally subject an employee to discharge or last chance agreement.
- D. Misuse or Other Medication Violations. An employee who has tested positive for the presence of drugs which were originally legally prescribed but may have been abused by the employee may be referred to an employee assistance program or SAP for drug

counseling or treatment. As an alternative to dismissal and at the discretion of the Sheriff, the employee may be subjected to a last chance agreement as a condition of continued employment, which shall include a requirement that the employee submit to unannounced drug testing if recommended by a SAP, for a period of time recommended by the SAP. The last chance agreement will also include authorization for the County to receive information necessary to assure compliance with the last chance agreement and assure future compliance with this Policy. If the employee violates the terms of treatment or rehabilitation, again tests positive or otherwise violates the last chance agreement during such period, he/she may be discharged, following fulfillment of any Loudermill due process obligations and as otherwise provided in the Last Chance Agreement.

If the level of discipline allows an employee to return to duty, he/she must agree to the following conditions:

- Meet all recommendations/requirements of the SAP.
- In the event the SAP does not specify any follow up testing, employee shall undergo up to six (6) periodic, but unannounced, drug and/or alcohol tests at the discretion of the DER within one (1) year of returning to duty.
- Any confirmed positive alcohol or verified positive prescription drug abuse result while the employee is undergoing required return to duty or follow-up treatment and/or testing shall result in termination.

5.31.13 RETURN TO DUTY PROCEDURES

Employees who have violated this Policy may only return to duty if the level of discipline allows it and the County has determined them eligible. The following statements reflect the return to duty and follow-up testing requirements of this Policy:

- A. Employees who have had a confirmed positive alcohol test or have abused prescription drugs must be evaluated, undergo treatment, if required, and be determined fit for return to work by the Substance Abuse Professional.
- B. Employees may be subject to periodic unannounced follow-up testing as determined by the Substance Abuse Professional who evaluated the employee. If the employee was found to need assistance in resolving his/her substance misuse problem, a minimum of six (6) such follow-up tests must be conducted during the twelve (12) months following the employee's return to duty.

5.31.14 RECORD KEEPING PROCEDURES

- A. The County's DER will maintain alcohol/drug testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.
- B. An employee is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER, SAP, or to the County drug testing management service.

- C. Information regarding an individual's alcohol/drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:
1. Such information may be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel when legally required.
 2. Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from an alcohol test and/ or a drug test.
 3. When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
 4. The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.
- D. The County shall release information regarding an employee's records to a subsequent employer upon receipt of a specific written request from the employee authorizing release of the records to an identified person.

E. Record Retention.

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

Negative and canceled drug test records; alcohol test results less than 0.01 g/210L	1 year
Records of supervisor training	Indefinite or 2 years beyond job responsibilities
Records of verified positive alcohol/drug test results; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules	5 years

5.31.15 INFORMATIONAL RESOURCES

Information on this Policy and associated procedures is available by contacting the DER as outlined on the Intranet at:

<http://web1.clackamas.us/des/drugtesting.html>

Questions may also be addressed directly to the County's drug testing management service.

5.31.16 COMMERCIAL DRIVERS LICENSE DUTIES

Employees performing jobs requiring a commercial drivers' license will also be required to comply with the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations, (see separate Policy for DOT drivers).

ATTACHMENT A – DEFINITION OF TERMS

For the purposes of this Policy, the following definitions apply.

Abuse/Misuse of Prescription Drugs: The use of a drug not in accordance with the prescribed dosage or method of use.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol: Ethyl alcohol or ethanol.

Alcohol Screening Device (ASD): A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Breath Alcohol Technician (BAT): An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

Breath Alcohol Testing Site: A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

CCSO: Clackamas County Sheriff's Office

CFR: United States Code of Federal Regulations

Chain of Custody: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

Collection Site: A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collector: A person who instructs and assists applicants and employees through the urine specimen collection process.

Confirmation Test: A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

Controlled Substances: Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

County: Clackamas County and/or Clackamas County Sheriff's Office

Designated Employer Representative (DER): An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this Policy.

Dilute Specimen: A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: Controlled Substances.

FHWA: Federal Highway Administration

FMCSA: Federal Motor Carrier Safety Administration

Initial or Screening Test: An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer (MRO): A licensed Doctor of Medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

Negative Drug Test: A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee's or applicant's system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

On Duty: Under this Policy, an employee is "on duty" when he/she is at work and ready to perform employment functions.

Positive Drug Test: A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by this Policy.

Confirmed Positive Drug Test: A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

Verified Positive Drug Test: A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

Prohibited Drugs: Marijuana, Cocaine, Opiates, Phencyclidine (PCP), Amphetamines, Benzodiazepines, Methadone, 6 Acetylmorphine (Heroin). (see Urine 8 Drug Panel)

Reasonable Suspicion: (5.31.8) The determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substances test must be based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee or other articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use.

Refusal to Submit: Refusal by an individual to provide a urine specimen after receiving notice of the requirement to be tested in accordance with this Policy.

Safety Sensitive Positions: All sworn law enforcement positions, all positions regularly stationed at the Jail, and medical examiners.

SAMHSA: Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

Screening or Initial Test: Immunoassay screen to eliminate “negative” urine specimens from further consideration.

Split Specimen Collection Procedure: A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

Split Test: If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

Substance Abuse Professional (SAP): Under DOT regulations, individuals who may serve as substance abuse professionals include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

ATTACHMENT B

The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:

DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE

The County will maintain an agreement with a drug and alcohol testing management service to advise the County on processes, developments, and changes concerning this Policy.

The firm chosen will be responsible for overseeing compliance of agents of the County with applicable federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and (MROs). It also submits blind specimens on behalf of the County, and maintains records as required by applicable federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

MEDICAL REVIEW OFFICERS

MRO services will be provided by the testing management service.

DRUG TESTING LABORATORIES

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

SUBSTANCE ABUSE PROFESSIONALS

Under this Policy, employees who refuse testing, have confirmed positive alcohol test results, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to employees as needed.

ATTACHMENT C – LAST CHANCE AGREEMENT -- EXAMPLE

[This attachment is an example of a last chance agreement form that may be used. The form may vary to fit the facts and circumstances of a particular situation.]

This is an agreement between [employee's name] (the Employee); the Clackamas County Sheriff's Office and Clackamas County (the Sheriff), and the Clackamas County Peace Officers' Association (the Association).

1. This agreement serves as notice to the Employee as to what to expect for continued employment with the Sheriff. This agreement does not guarantee employment for any specific period.
2. The Employee agrees to continue in a bona fide drug and/or alcohol [tailor to each case] outpatient rehabilitation program recommended and approved by a qualified substance abuse counselor (the Counselor). The Employee fully understands that s/he is to remain in such a program, including any required aftercare, until released in writing by the Counselor. For [period of time] from the date of this agreement, the Sheriff shall have the right to conduct random breath alcohol or urinalysis testing of [employee's name] on work time at the expense of the Sheriff. Should the employee refuse to cooperate with said breath alcohol or urinalysis, or test positive for alcohol/drugs or abuse prescription medication while on the job, s/he shall be subject to termination under the Association contract. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
3. The Employee agrees to grant permission to the Counselor to release verification to the County that the Employee is meeting and has completed the requirements of the program and any required aftercare. If the Employee discontinues the program without the consent of the Counselor or is terminated from the program by the counselor, s/he will be considered in violation of the last chance agreement. A violation of the last chance agreement shall be considered "just cause" for discharge subject to paragraph 4 below.
4. The Employee agrees that this last chance agreement constitutes a final warning and that any violation or non-compliance with its terms within [x] years, shall be considered just cause for discharge and shall result in loss of employment. In the event the termination is grieved and submitted to arbitration, the arbitrator's authority will be limited to determining whether there was or was not a violation of the Last Chance Agreement. In the event the arbitrator finds there was a violation of the Agreement, that violation will automatically be considered "just cause" for termination. The parties agree to enter into a factual stipulation so limiting the scope of the issue and the arbitrator's authority.
5. Except as stated in this agreement, the terms and conditions of the Employee's work shall be the same as all other employees in the Association bargaining unit.
6. The Association and the employee agree that this resolution is in lieu of termination [and in addition to specified discipline] of [employee's name] and that the agreement resolves all disputes related to proposed discipline. The Employee and the Association agree not to challenge this agreement as proper under just cause or any other provision of the collective bargaining agreement or any other legal challenges in any forum.

7. This is the complete agreement between the parties who sign in knowingly and of their own free will, after seeking advice of counsel.
8. The contents of this agreement related to the employee's involvement in alcohol/drug treatment and testing and placement on a "last chance agreement" shall be maintained in confidence and strictly on a "need to know" basis by the parties. Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel, unless legally required.
9. This agreement does not set future precedent between the Sheriff and the Association and shall not be used as evidence of waiver of rights by the Association or the Sheriff in any future disputes between the parties.

[Employee's name]

Date

Clackamas County Peace Officers Association

Date

Clackamas County

Date

ADDENDUM 2 – DOT DRUG AND ALCOHOL TESTING POLICY

**Clackamas County Sheriff’s Office
Employees covered by US DOT Regulations**

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DRUG AND ALCOHOL TESTING POLICY

Clackamas County Sheriff's Office Employees covered by US DOT Regulations

POLICY STATEMENT

The Clackamas County Sheriff's Office (CCSO or "the County") is strongly committed to providing a safe, drug-free workplace. In addition, an employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, the CCSO has implemented a substance abuse testing Policy which applies to all applicants for, and employees who hold "covered driver" positions.

The Sheriff's Office recognizes each individual's value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome a drug dependency problem (see "Employee Assistance Program and Self-Referral").

This Drug and Alcohol Testing Policy ("Policy") is intended to comply with DOT regulations, changes which will supersede specific Policy provisions. To view revisions to this Policy made by the Federal Motor Carrier Safety Administration (FMSCA) or the Federal Highway Administration (FHWA) since this publication, and additional information, go to: <http://web1.clackamas.us/des/drugtesting.html>

EFFECTIVE DATE: February 1, 2011 **POLICY REVISED:** ~~September 2020~~ April 2018

WHO WILL BE TESTED AND WHEN

Covered drivers are defined as those who are required to hold commercial driver's licenses for their jobs. Such applicants and employees fall under the Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations ("Controlled Substances and Alcohol Use and Testing," 49 CFR Part 382). Generally, covered drivers are operators of commercial motor vehicles which 1) are greater than 26,000 pounds GVWR, 2) carry hazardous materials in placardable quantities, or 3) carry 16 or more passengers, including the driver.

Covered drivers may be tested for drugs or alcohol whenever they are on duty.

For the purposes of this Policy, "on duty" is defined as any time an individual is on the job and ready to perform safety-sensitive functions. Performing a safety-sensitive function means any period in which the driver is actually operating, preparing to operate, or immediately available to operate a vehicle requiring a Commercial Driver License. Time spent in association with drug testing specimen collection and/or alcohol testing shall be considered "on-duty" time.

EDUCATION AND TRAINING

The CCSO will distribute information to employees on the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; and drug counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

When deputies are assigned duties that involve driving vehicles requiring a Commercial Driver License (CDL) they will receive specific information regarding the CCSO's Drug and Alcohol Testing Policy and be informed of their responsibilities with respect to compliance with federal drug and alcohol testing regulations.

Employees (see 5.31.8) who may be required to make "reasonable suspicion" determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes EACH for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase supervisory proficiency.

EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL

When a covered driver voluntarily reports a drug/alcohol problem BEFORE it is discovered through a drug or alcohol test, he/she will immediately be removed from driving duties.

Under the County's independent authority, employee assistance for self-referral will be handled as described in the Sheriff's Office Drug and Alcohol Policy.

PRESCRIPTION MEDICATIONS

Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Covered drivers should ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Under the County's independent authority, all covered drivers are specifically required to notify their immediate supervisors when they are taking medications associated with warning labels (for example, relating to the operation of vehicles, heavy equipment, or machinery). An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication with his/her doctor in relation to job duties; the type of medication; beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the Designated Employer Representative (DER). The DER working in conjunction with CCSO Management will then determine whether to require written medical authorization to work from a prescribing health care practitioner or if any accommodations are necessary.

The County will restrict access to medical information to the DER, the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff and will protect the confidentiality and security of the information.

All medicines brought onto the CCSO property/premises must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this Policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

“Medical Marijuana”

Marijuana is a Class I controlled substance; its possession and use is illegal under federal law. Although the State of Oregon permits the possession and use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor, this is not an acceptable explanation for a positive drug test under this Policy. The Sheriff's Office is a law enforcement agency and will observe the terms of federal law, which preempt state law in this regard. The Medical Review Officer (MRO) will automatically verify positive tests as being positive without regard to the existence of a medical marijuana card.

In addition, possession of marijuana on county property is grounds for dismissal.

PROHIBITIONS

FMCSA REGULATIONS SPECIFY the following prohibitions:

- 1) Covered drivers must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- 2) Covered drivers are prohibited from possessing alcohol while on duty; from using alcohol while on duty; and from having alcohol present in their systems at a level of 0.02 g/210 L² or greater while on duty. Those with levels of 0.02 or greater as demonstrated by alcohol testing are subject to immediate removal from duty for a minimum of 24 hours (see also “Discipline”)
- 3) Covered drivers are prohibited from using alcohol after an on-the-job accident until:
 - a. The DER or his/her designated alternate has determined that alcohol testing is not required, OR
 - b. An alcohol test has been completed, OR
 - c. Eight (8) hours have passed since the accident.
- 4) Covered drivers must not show evidence of the use of controlled substances without a valid prescription.

² Breath testing results are given in grams of alcohol per 210 liters of breath (g/210L)

- 5) Refusal by a covered driver to submit a urine, saliva or breath specimen when required by federal regulations will have the same consequences as a positive drug test result, or a breath alcohol test result of 0.04 or greater (see “Discipline” section), and result in the immediate removal of the employee from duty. In addition, refusal of a test after a fatal accident may result in more severe penalties under Federal law.

INVESTIGATION OF PREVIOUS TESTING

As a condition of employment, applicants for covered driver positions or current employees being assigned covered driving duties will be required to provide written consent for the CCSO to obtain the following information from DOT regulated employers who have employed the applicant during any period during the three (3) years preceding the date of application or transfer:

- Names and addresses of previous DOT covered employers;
- Alcohol tests with a result of 0.04 or greater;
- Verified positive drug tests;
- Refusal to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing regulations; and
- If the applicant violated a DOT drug and alcohol regulation, documentation of the applicant’s successful completion of DOT return to duty requirements. (Note: If the previous employer does not have information about the return to duty requirements, the CCSO must seek to obtain this information from the applicant.)

The County must ask the applicant or employee being assigned covered driving duties whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which they applied for, but did not attain, a DOT-regulated safety-sensitive transportation position during the three (3) years preceding date of application. (If they admit that he/she had a positive test or refusal to test, they must document successful completion of the return to duty process.)

TYPES OF DRUG AND ALCOHOL TESTING REQUIRED

The following are occasions for drug and alcohol testing under this Policy:

Pre-employment Testing

Pre-employment drug testing is required for all covered driver positions. Applicants and/or current employees being assigned covered driving duties will be notified that drug testing is a requirement of the application process.

Under the County’s independent authority, and as permitted by the DOT, a negative dilute result is unsatisfactory on a pre-employment test. Applicants and/or current employees being assigned covered driving duties will be given one additional opportunity to provide

a valid specimen. The result of the second test will determine whether the person is eligible for employment as a covered driver.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant and/or current employee being assigned covered driving duties for the covered driver position.

Random Testing

Definition of Random Test. A random test is a test that is unannounced, and where every person in the random selection “pool” has an equal chance of being selected for testing each time a selection occurs. Random testing is considered to be an effective deterrent to substance abuse. Covered drivers are required to be randomly tested under DOT regulations.

Method of Random Selection: The County has contracted with an outside drug testing management service to perform computerized random selections on its covered employees. Selections occur monthly on a randomly selected date. Selections are therefore spread reasonably throughout each 12-month period.

A number of drug tests equal to at least 50% of the number of individuals in the program will be completed annually, as required by DOT drug testing regulations; a number of alcohol tests will be completed annually, as required by current DOT regulations.

Procedure for Notification and Specimen Collection/Testing:

- 1) The drug testing management service will maintain a secure data base of individuals covered by the Federal Highway Administration’s drug and alcohol testing regulations.
- 2) On a randomly selected date, the service will transmit a list of individuals who have been selected for testing to the DER.
- 3) The DER or his/her designated representative will notify the individual in person or by telephone that he/she has been selected to provide a urine and/or breath specimen for testing. The date and time of notification will be recorded on the employee instruction card.
- 4) IMMEDIATELY after being notified, each individual selected for testing must proceed to a specimen collection and/or alcohol testing facility. If the individual is in a remote location, the DER will arrange for him/her to go to a local clinical facility so that specimen collection and/or breath testing are completed expeditiously.

Reasonable Suspicion Testing

“Reasonable suspicion” means that an individual has given a supervisor or other responsible manager reason to believe that he/she may be impaired, intoxicated, or under the influence of a controlled substance or alcohol.

A reasonable suspicion test will be required under the following conditions:

- 1) The CCSO shall require a driver to submit to an alcohol test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning alcohol. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
- 2) The CCSO shall require a driver to submit to a controlled substances test when the CCSO has reasonable suspicion to believe that the driver has violated the prohibitions of this Policy concerning controlled substances. The CCSO’s determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The “reasonable suspicion” behavior should be witnessed by at least two persons if at all feasible, but only one observation is required. A drug and/or alcohol test can be required only by a Lieutenant who has first consulted with a Captain or higher ranking officer, a Lieutenant who has been designated to act temporarily as a Captain, or a Captain or higher ranking officer. The officer ordering the test may rely on the observation of and recommendation of Sergeants, bargaining unit or non-bargaining unit personnel. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any “reasonable suspicion” incident will be documented as soon after the incident as possible and the CCPOA will be provided with a copy of that documentation. The employee involved will be immediately removed from the workplace and escorted by a supervisor to a urine specimen collection or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. UNDER THE COUNTY’S OWN AUTHORITY, and as permitted by the DOT, a negative dilute result is unsatisfactory on a reasonable suspicion test. The employee will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail.

Employees will have access to union representation if requested at every step of the “reasonable suspicion” testing procedures, except during specimen collection. The County will inform the union representative of the reasonable suspicion that supports the testing requirement. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This

representation shall not delay established collection and testing procedures. A list of qualified union representatives will be provided to the County.

Post-Accident Testing

A reportable accident under Federal Highway Administration regulations is defined as an accident in which a covered driver was operating a commercial motor vehicle and in which:

- 1) A fatality occurred; or
- 2) The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; or
- 3) The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

UNDER FMCSA REGULATIONS, employees involved in a reportable accident are required to be:

- Tested for alcohol as soon as possible, but in no case later than 8 hours after the incident.
- Drug tested as soon as possible, but in no case later than 32 hours after the incident.

The CCSO will ensure that the employee involved in a *reportable accident* will be immediately removed from duty, and escorted to a collection/testing site. A union representative shall be notified immediately upon the request of the employee and the representative shall be afforded two (2) hours to respond. This representation shall not delay established testing procedures. A list of qualified union representatives will be provided to the County.

An employee who is seriously injured and cannot provide a specimen for testing may be requested to authorize the release of relevant hospital reports and other documentation that would indicate whether there were any controlled substance(s) in his/her system at the time of the incident.

The CCSO will provide its covered drivers with any necessary information and procedures to enable them to meet federal requirements for post-accident testing.

Covered drivers are prohibited from using alcohol for eight (8) hours following an accident/crash or until they have undergone a post-accident alcohol test, whichever occurs first.

An alcohol test should be administered within two (2) hours following the accident/ crash, but no later than eight hours.

A drug test should be administered as soon as possible but no later than thirty-two (32) hours after the occurrence of an accident/crash.

Return to Duty and Follow-up Testing

FMCSA regulations require return to duty and follow-up drug and/or alcohol testing when a covered driver has engaged in prohibited drug or alcohol-related behavior. A negative drug and/or alcohol test is required prior to return to duty. Follow-up testing may continue for no longer than sixty months following return to duty. The CCSO will comply with any mandated testing requirements outlined by the SAP.

Please refer to “Return to Duty Procedures “and” Disciplinary Action and Procedures” for additional information.

Costs of Testing

The County will be responsible for payment of all pre-employment, pre-duty, post-accident, random, and reasonable suspicion tests.

The County will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a negative or canceled test result.

The employee will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a positive result. The County will pay for the test and then collect from the employee.

DRUG AND ALCOHOL TESTING PROCEDURES

Drug Testing

- 1) Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures specified by DOT regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- 2) If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids for up to three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test per 49 CFR 40.193.
- 3) Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services will perform drug testing.

- 4) When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review”).

Breath Alcohol Testing

- 1) Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- 2) Breath alcohol tests with results below 0.02 require no further action.
- 3) Tests with results of 0.02 or above will be confirmed as follows:
 - a. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
 - b. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted per 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.
- 4) If the result of the confirmed breath alcohol test is 0.02 or greater, the Breath Alcohol Technician must immediately notify the DER or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the DER.

DRUG TEST RESULTS REVIEW

Drug test results on a covered driver which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the MRO.

A POSITIVE drug test result is defined as the detection of any one or more of the substances tested for under FMCSA drug and alcohol testing regulations at the levels set forth by the DOT³ at the time of testing listed in the table shown below.

³ <https://www.transportation.gov/odapc/part40/40-87>

<u>Substance or Class</u>	<u>Initial Screening Cut-off</u>	<u>Confirmation Cut-off</u>
Amphetamines	500 ng/mL	250 ng/mL
Methamphetamines*		
MDMA (Ecstasy)		
Cocaine	150 ng/mL	100 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Opiates	2000 ng/mL	2000 ng/mL
Codeine/Morphine	2000 ng/mL	2000 ng/mL
6-Acetylmorphine (Heroin)	10 ng/mL	10 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL	100 ng/mL
e	100 ng/mL	100 ng/mL
Oxycodone/Oxymorphone		
Phencyclidine (PCP)	25 ng/mL	25 ng/mL

- ~~Methamphetamines, MDMA (Ecstasy), Codeine/Morphine and 6 Acetylmorphine (Heroin) all act as "metabolites" tested under the main substance or class.~~
- ~~Drug testing cutoff levels are the minimum concentrations of drugs or metabolites that must be present in specimens, before labs will report the drug testing results as positive.~~

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as having used drugs in violation of a DOT regulation. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

MRO Reporting Options and Employer Actions

- “Negative” – self explanatory
- “Negative Dilute” – Upon receipt of a “negative dilute,” the employee shall be required to immediately provide another specimen. The collection shall be conducted with the minimum possible advance notice and the employee shall be escorted to the collection facility by the DER, Supervisor, or other designated person. In the event the second test result is “negative dilute,” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test” under the regulations.
- “Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate collection of another specimen, under direct observation, with no advance notice to the donor.

- “Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” No further action required unless a “Negative” test result is required for pre-employment, return to duty, or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.
- “Cancelled Invalid Result.” An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required.” The employer is not required to take any further action unless a “negative result is required (i.e., pre-employment, return to duty, or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.
- “Positive or Positive Dilute” – The employer must comply with the requirements for a positive test under the regulations.
 - Immediately remove employee from safety-sensitive functions; and
 - Referral to a SAP – If the employee is terminated, he/she is to be furnished with a list of SAP resources (names, addresses, and telephone numbers).
 - Return to Duty provisions must be followed.
- “Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.
- “Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

MRO Verification Without Notifying the Employee

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO;
- The MRO has successfully made and documented a contact with the employee, and instructed the employee to directly contact him/her, and more than 72 hours have passed since the time the MRO contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the test.

Communication of Results

The MRO or his/her designated representative will report test results ONLY to the County’s Designated Employee representative who shall notify either the Sheriff, Undersheriff, or person appointed to fill the duties of Sheriff or Undersheriff. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance.

Employees and applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

FAILURE TO COOPERATE

Failure to cooperate with any aspect of this Policy, including but not limited to falsifying or attempting to falsify test results or specimens or refusing to cooperate in testing will subject the employee to progressive discipline, up to and including discharge. Any covered driver who refuses to take a drug or alcohol test to comply with FMCSA regulations (49 CFR Part 382) will be immediately removed from duty as required by these federal regulations.

DISCIPLINARY ACTION AND PROCEDURES

- 1) An otherwise qualified applicant for a covered driver position whose drug test results are negative and who has documented satisfactory participation in a previous employer’s drug and alcohol testing program, will be considered qualified for the position offered. Applicants with verified positive drug test results will be considered ineligible for the position.
- 2) Any covered driver found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty and will be subject to progressive discipline, up to and including discharge. Violations include:
 - a. Alcohol possession or use in violation of the prohibitions stated in this Policy (e.g. pre-duty, post-accident; see pages 6 and 7)
 - b. An alcohol test result of 0.04 or greater
 - c. A verified positive drug test result
 - d. Refusal to test or to cooperate
- 3) A covered driver determined to have evidence of alcohol in his/her system in the range of 0.02 – 0.039 will be subject to progressive discipline.

- a. On any occasion in which a covered driver has a breath alcohol test result of 0.02 or greater, but less than 0.04, he/she will be immediately removed from work for a period of at least 24 hours. The employee may deduct this time away from work from any available paid time except sick leave, or choose leave of absence without pay. No further alcohol testing will be required prior to resuming work at the beginning of the next shift following the end of the 24-hour period. These occasions will be considered violations of this Policy, and will subject the employee to progressive discipline.
- 4) Covered drivers who have volunteered information concerning drug or alcohol problems and/or voluntarily entered into drug and/or alcohol evaluation and treatment programs shall not have that admission used against them in progressive disciplinary proceedings.
- 5) **ALCOHOL RESULT OF 0.04 OR ABOVE**
Under the County's independent authority, any covered driver who has had a **confirmed alcohol result of 0.04** or above shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.
- 6) **POSITIVE DRUG TEST**
Under the County's independent authority, any covered driver who has had a verified positive drug test shall be subject to progressive disciplinary procedures up to and including discharge. If returned to duty, he/she must agree to meet all return to duty requirements of the FMCSA.

RETURN TO DUTY PROCEDURES

The following statements reflect the return to duty and follow-up testing requirements of the FMCSA:

- 1) Covered drivers who have had alcohol test results of 0.04 or greater must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A "return to duty" alcohol test with a result less than 0.02 is required prior to resumption of safety-sensitive or covered driving functions.
- 2) Covered drivers who have had verified positive drug tests must be evaluated, undergo treatment, if required, and be recommended for return to work by the SAP. A negative "return to duty" drug test is required prior to resumption of safety-sensitive or covered driving functions.
- 3) Covered drivers may be subject to periodic unannounced follow-up alcohol and/or drug testing as determined by the SAP who evaluated the employee.

Under the County's independent authority covered drivers who have had alcohol test results of 0.04 or greater and/or a verified positive drug test and are awaiting

recommendation for return to duty shall deduct this time away from work from any available paid time except sick leave (unless provided by law), or choose leave of absence without pay.

RECORD KEEPING PROCEDURES

The CCSO's DER will maintain drug/alcohol testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.

A driver is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the DER or to the County drug testing management service.

The County shall release information regarding a covered driver's records to a subsequent employer upon receipt of a specific written request, by the covered driver, authorizing release of the records to an identified person.

Information regarding an individual's drug test results or rehabilitation is considered to be personal and confidential and may be released only upon written consent of the individual, except:

- 1) Such information must be released to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its drivers.
- 2) Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered driver and arising from an alcohol test and/or a verified positive drug test or from the CCSO's determination that the driver engaged in conduct prohibited by FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, the CCSO will disclose information regarding post-accident alcohol and/or drug testing.

Under the County's independent authority,

- 4) Such information may not be released to any state official with specific regulatory authority over the Sheriff's Office or law enforcement personnel unless legally required.
- 5) When the County is compelled by a judicial determination or order that the information is not protected from disclosure.
- 6) The information is needed by medical personnel for the diagnosis or treatment of a patient who is physically unable to authorize disclosure.

Record Retention

The following schedule of record keeping will be maintained by the DER and his/her authorized agents:

- Negative and canceled drug test records; records of alcohol test results less than 0.02 1 year
- Information obtained from previous employers 3 years
- Records of supervisor training Indefinite or 2 years beyond job responsibilities
- Records of verified positive drug test results; alcohol test results of 0.02 or greater; refusals to be tested for drugs and/or alcohol; SAP evaluations and referrals; follow-up tests and schedules 5 years
- Documentation of EBT calibration; Custody Control Forms; Specimen collection/alcohol test records 2 years
- Calendar year record of total number of employees tested and the results of tests 5 years

SUPPLEMENT A – DEFINITION OF TERMS

For the purposes of this Policy, the following definitions apply.

Abuse/Misuse of Prescription Drugs: The use of a drug not in accordance with the prescribed dosage or method of use.

Accident:

Reportable accident (covered drivers): An accident involving a commercial motor vehicle in which:

- a. A fatality occurred; OR
- b. The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; OR
- c. The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol: Ethyl alcohol or ethanol.

Alcohol Screening Device (ASD): 49 CFR 40.3 – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Breath Alcohol Technician (BAT): An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

Breath Alcohol Testing Site: A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

CCSO: Clackamas County Sheriff's Office

CFR: United States Code of Federal Regulations

Chain of Custody: Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of

the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

Collection Site: A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collector: A person who instructs and assists applicants and employees through the urine specimen collection process.

Confirmation Test: A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the usual confirmation method for drug testing at this time.

Controlled Substances: Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

County: Clackamas County and/or Clackamas County Sheriff's Office

Covered Driver: Individual who is required to hold a Commercial Driver's License (CDL) for his/her job with the CCSO and who is subject to drug testing under Federal Highway Administration, Department of Transportation regulations (49 CFR Parts 40 and 382).

Designated Employer Representative (DER): An employee authorized by the employer to assist supervisors in taking immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

Dilute Specimen: 49 CFR 40.3 – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: Controlled Substances

FHWA: Federal Highway Administration

FMCSA: Federal Motor Carrier Safety Administration

GVWR: Gross Vehicular Weight Rating; size criterion for determining classification of a commercial motor vehicle under federal regulations.

Initial or Screening Test: An immunoassay screen to eliminate “negative” urine specimens from further consideration.

Medical Review Officer (MRO): A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the DER.

Negative Drug Test: A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee’s or applicant’s system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

On Duty: Under this Policy, a covered driver is “on duty” when he/she is at work and ready to perform safety-sensitive functions, e.g., qualified and available to drive a commercial motor vehicle.

Positive Drug Test: A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by 49CFR Part 40.

Confirmed Positive Drug Test: A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory which performs the analyses.

Verified Positive Drug Test: A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

Prohibited Drugs: Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

Random Testing: Computerized random selection and testing for drugs in which each person in the computer data base has an equal chance of selection each time a selection occurs, in accordance with regulatory requirements.

Reasonable Suspicion: Specific, articulable observations of an employee’s condition or performance that indicate possible drug or alcohol use. Examples include, but are not limited to, deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee. The observations may include indications of the chronic and withdrawal effects of controlled substances, as well as include reliable information from other employees that support the violation of Policy prohibitions.

Refusal to Submit: Refusal by an individual to provide a urine or breath specimen after receiving notice of the requirement to be tested in accordance with this Policy.

Safety Sensitive Functions: Ready to perform, performing, or just finished performing, the following duties: waiting to be dispatched, inspecting equipment, driving, loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

SAMHSA: Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing.

Screening or Initial Test: Immunoassay screen to eliminate “negative” urine specimens from further consideration.

Split Specimen Collection Procedure: A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

Split Test: If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

Substance Abuse Professional (SAP): Under DOT regulations, individuals who may serve as SAPs include:

- licensed physicians (Medical Doctors or Doctors of Osteopathy) or
- licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the DER must inform employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified SAPs in the local area.

Substituted Specimen: A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

SUPPLEMENT B – SERVICE PROVIDERS

The Clackamas County Risk Management Department will manage the drug and alcohol testing program for the Sheriff's Office with the following provisions:

DRUG AND ALCOHOL TESTING MANAGEMENT SERVICE

The County will maintain an agreement with a drug and alcohol testing management service(s) to advise the County on processes, developments, and changes concerning this Policy.

The firm(s) chosen will be responsible for overseeing compliance of agents of the CCSO with federal regulations, including interacting with specimen collection and alcohol testing agents, designated drug testing laboratories and MROs. It also performs random selections and maintains records as required by federal regulations.

In the event of a need to change the provider of these services, the choice of provider will be made by the DER and communicated with the Peace Officers Association.

MEDICAL REVIEW OFFICERS

MRO services will be provided by the testing management service.

DRUG TESTING LABORATORIES

The County will use drug testing laboratories which are SAMHSA-certified, as required by federal drug testing regulations. The County's drug testing management service may arrange for the services of a drug testing laboratory in order to best serve the interests of the County.

SUBSTANCE ABUSE PROFESSIONALS

Under this Policy, covered employees who refuse testing, have alcohol test results of 0.01 BAC for Sheriff Office Policy (0.04 BAC for DOT policy) or greater, and/or have verified positive drug test results must be referred by the DER to a SAP for evaluation. The County will maintain a list of such qualified individuals in its geographic area and make this list available to covered drivers as needed.

The County's drug testing management service will assist the County in locating SAPs in the driver's community upon request.



Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

June 10, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY2021 Hazardous Materials Emergency Preparedness (HMEP)
Grant Sub-recipient Agreement between Clackamas County and the State of Oregon

Purpose/Outcomes	The purpose of the grant is to hire a contractor to design, coordinate, facilitate, and provide written after action reports for a hazardous materials functional exercise in Clackamas County.
Dollar Amount and Fiscal Impact	The grant agreement is for \$17,345, with a 25% sub-recipient cost match, bringing the grant total to \$21,681. Clackamas County agrees to match the amount of \$4,336.
Funding Source	Clackamas County Disaster Management will provide \$4,336 in staff time as an in-kind (soft match).
Duration	Effective upon execution and terminate on March 31, 2022.
Previous Board Action	This is an ongoing series of awards to provide assistance to the Clackamas County for Local Emergency Planning Committee (LEPC) planning and exercises. The last grant was approved in December 2019 by the BCC.
Strategic Plan Alignment	1. Ensure Safe, Healthy and Secure Communities
County Counsel Review	January 25, 2021 AN
Procurement Review	N/A
Contact Person	Daniel Nibouar, Deputy Disaster Manager – Disaster Management Department, 503-655-3381
Contract No.	Grant Number: 20-703

BACKGROUND:

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

RECOMMENDATION:

Staff respectfully recommends BCC approval of the FY2021 HMEP agreement.

Respectfully submitted,

Daniel Nibouar, Interim Director

SUB-RECIPIENT GRANT AGREEMENT

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

RECITALS

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

TERMS OF SUB-RECIPIENT GRANT AGREEMENT

1. PURPOSE.
 - 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions of the distribution of the Grant Funds and implementation of the Project, as a part of state and local hazardous materials emergency planning and preparedness measures.
2. TERM / EFFECTIVE DATE.
 - 2.1 This Agreement terminates on March 31, 2022 unless sooner terminated or extended pursuant to other provisions of this Agreement.
3. SUB-RECIPIENT OBLIGATIONS.
 - 3.1 Sub-recipient agrees to comply with all Project details as set forth in Exhibit A, the Application for Funds, and with the requirements of the Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness Grant Program, Terms and Conditions attached hereto as Exhibit B (“HMEP Terms and Conditions”). For the purposes of this Agreement, Sub-recipient will comply with only those sections applicable to its role as a sub-recipient with an exception, as provided in Section 16 of the HMEP Terms and Conditions for “Flow-down of Requirements under Sub-awards”.
 - 3.2 Sub-recipient agrees to provide 25% of the total project cost in cash (hard match) or as an in-kind (soft match) contribution, or a combination of both (“Sub-recipient Match”). Sub-recipient agrees to provide documentation showing how it satisfied the Sub-recipient Match requirement. Match validation

documentation shall be provided with the Request for Reimbursement. OSFM reserves the right to determine if the Sub-recipient Match requirement is satisfied. The minimum amount of match required for the Grant Funds under this Agreement is **\$4,336.00** (“Sub-recipient Match Amount”).

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

4. OSFM’s OBLIGATIONS.

- 4.1 OSFM agrees to provide direction and support, on an “as needed” basis when reasonable, to Sub-recipient.
- 4.2 OSFM agrees to work with Sub-recipient to distribute announcements to public safety agencies across Oregon that may be interested in participating in the training or exercise.
- 4.3 OSFM agrees to reimburse Sub-recipient for actual incurred expenditures related to the completion of the Project, excluding the Sub-recipient Match Amount, with the Grant Funds up to an amount not to exceed **\$17,345.00**, (“Grant Amount”) for performance of the obligations set forth in Section 3. Any and all expenses not covered by the Grant Amount and Match Amount are the sole responsibility of Sub-recipient. Questions regarding eligible costs should be addressed to the OSFM Grant Project Manager identified in Section 5 of this Agreement, who will have final decision-making authority. Any Grant Funds disbursed to Sub-recipient under this Agreement that are used in violation or contravention of one or more of the provisions of this Agreement or the laws pertaining to public funds (“Misexpended

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

5. NOTIFICATIONS.

5.1 OSFM CONTACT.

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

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

5.2 NAME OF OTHER PARTY CONTACT.

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

Daniel Nibouar, Interim Director
Clackamas County Disaster Management
1710 Red Soils Court #225
Oregon City, OR 97045
Ph: 503-650-3381
Email: dnibouar@clackamas.us

5.3 ANNOUNCEMENTS; PUBLICATIONS.

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

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

6. TERMINATION.

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

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

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

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

7. NON-APPROPRIATION

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

8. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.

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

9. COMPLIANCE WITH GOVERNMENT REGULATIONS.

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

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

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

10. CONTRIBUTION.

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

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

11. REMEDIES.

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

12. INSURANCE REQUIREMENTS.

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

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

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

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

13. THIRD PARTY BENEFICIARY.

OSFM and Sub-recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

14. FORCE MAJEURE.

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

15. ENTIRE AGREEMENT/WAIVER/MERGER.

This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective

only in the specific instance and for the specific purpose given. The failure of OSFM to enforce any provision of this Agreement shall not constitute a waiver by OSFM of that or any other provision.

16. AMENDMENTS.

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

17. RECORDS MAINTENANCE; ACCESS.

Sub-recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. If Sub-recipient expends \$500,000 or more of federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. Copies of all audits must be submitted to OSFM within 30 days of completion. If Sub-recipient expends less than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Sub-recipient is exempt from federal audit requirements for that year. In addition, Sub-recipient shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Sub-recipient's performance. Sub-recipient acknowledges and agrees that OSFM and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Name of Other Party that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Sub-recipient shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

18. SEVERABILITY.

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

19. COUNTERPARTS.

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

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

CLACKAMAS COUNTY DISASTER MANAGEMENT _____ Daniel Nibouar Interim Director	DATE: _____
OREGON OFFICE OF STATE FIRE MARSHAL: _____ Mariana Ruiz-Temple State Fire Marshal	DATE: _____

EXHIBIT A

STATEMENT OF WORK

The purpose of the Project is *hire a contractor to design, coordinate, facilitate, and provide written after action reports for a Functional Exercise in Clackamas County.*

THE PROJECT

APPLICATION FOR FUNDS

NOTE: The Grant Application is paginated with an “A” preceding the page number. The following page numbers constitute Exhibit A, Application for Funds: A-1 – A-6.

EXHIBIT B

HMEP TERMS AND CONDITIONS

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

NOTE: The Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions is paginated with an “B” preceding the page number. The following page numbers constitute Exhibit B, Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions:
B-1 – B-17

EXHIBIT C
REQUEST FOR REIMBURSEMENT (RFR)

EXHIBIT D

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 DEPARTMENT OF TRANSPORTATION

During the performance of this Agreement, the Sub-recipient, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. Compliance with Regulations:

The Sub-recipient shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination:

The Sub-recipient, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. The Sub-recipient shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix D of the Regulations.

3. Solicitation for contractors, including procurements of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the Sub-recipient for work to be performed under a contract, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the Sub-recipient of the contractor’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports:

The Sub-recipient shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State of Oregon or the Pipeline and Hazardous Materials Safety Administration (PHMSA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Sub-recipient is in the exclusive possession of another who fails or refuses to furnish this information the Sub-recipient shall so certify to the State of Oregon or the Pipeline and Hazardous Materials Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:

In the event of the Sub-recipient’s noncompliance with nondiscrimination provisions of this Agreement, the State of Oregon shall impose sanctions as it or the Pipeline and Hazardous Materials Safety Administration may determine to be appropriate, including but not limited to:

- (a) Withholding of payments to the Sub-recipient under the Agreement until the Sub-recipient complies; and/or,
- (b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions:

The Sub-recipient shall include the provisions of paragraphs (1) through (6) in every contract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Sub-recipient shall take such action with respect to any contract or procurements as the State of Oregon or the Pipeline and Hazardous Materials Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Sub-recipient becomes involved in, or is threatened with, litigation with a contract or supplier as a result of such direction, the Sub-recipient may request the State of Oregon to enter into such litigation to protect the interests of the State of Oregon, and in addition, the Sub-recipient may request the United States to enter into such litigation to protect the interest of the United States.

EXHIBIT E

SUBCONTRACTOR INSURANCE REQUIREMENTS.

General.

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

Types and Amounts.

1. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

2. PROFESSIONAL LIABILITY. Not required.

3. COMMERCIAL GENERAL LIABILITY.

Required **Not required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

4. AUTOMOBILE LIABILITY INSURANCE.

Required **Not required**

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

5. POLLUTION LIABILITY. Not required by OSFM.

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

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

8. NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Sub-recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

9. CERTIFICATE(S) OF INSURANCE. Sub-recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify:

- i) all entities and individuals who are endorsed on the policy as Additional Insured and
- ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

APPENDIX I**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Sub-recipient name (which must match registered name in DUNS): Clackamas County on behalf of the Department of Disaster Management
- (ii) Sub-recipient's DUNS number: 96992656
- (iii) Federal Award Identification Number (FAIN): 693JK31940034HMEP
- (iv) Federal Award Date: 9/18/2019
- (v) Sub-award Period of Performance Start and End Date: From November 1, 2020 to September 20, 2021
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$17,345.00
- (vii) Total Amount of Federal Funds Obligated to the Sub-recipient by the pass-through entity including this Agreement: \$17,345.00
- (viii) Total Amount of Federal Award committed to the Sub-recipient by the pass-through entity: \$17,345.00
- (ix) Federal award project description: Clackamas County Functional Exercise
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: USDOT – Pipeline and Hazardous Material Safety Administration
 - (b) Name of pass-through entity: Oregon State Police, Office of State Fire Marshal
 - (c) Contact information for awarding official of the pass-through entity: terry.wolfe@osp.oregon.gov
- (xi) CFDA Number and Name: 20.703 Interagency Hazardous Materials Public Sector Training and Planning Grants
Amount: \$306,625.00
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 9.5%



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Sarah Eckman, BCS Interim Director

June 3, 2021

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of a Local Government Grant Program Agreement between the North Clackamas
Parks and Recreation District and the Oregon Parks and Recreation Department for
Development of Milwaukie Bay Park

Purpose/Outcome	Provides grant funding to complete the development of Milwaukie Bay Park.
Dollar Amount and Fiscal Impact	Contract maximum value is \$750,000. The required 50% match is \$750,000. North Clackamas Parks and Recreation District (NCPRD) funds are planned for the match, using existing System Development Charge revenues. No County General Funds are involved. The grant and matching funds are a part of the total project development cost estimated at \$9,600,000.
Funding Source	<ul style="list-style-type: none"> • Oregon Parks and Recreation Department Local Government Grant Program for \$750,000 grant • NCPRD System Development Charge revenues for match.
Duration	This agreement is effective once signed by all partnering agencies' representatives and terminates by May 31, 2023; provisions for contract extension are included if completion is projected after the termination date.
Previous Board Action/Review	<ul style="list-style-type: none"> • March 19, 2020 Business Meeting: Board Order approving submission of LGGP applications (Order 2020-18) • May 18, 2021 Policy Session: Approve staff bringing the LGGP Agreement to the BCC, acting as the NCPRD Board of Directors
Strategic Plan Alignment	<ul style="list-style-type: none"> • Provide economic development, public spaces, and community enrichment services to residents, businesses, visitors, and partners so they can thrive and prosper in healthy and vibrant communities. • <i>Honor, Utilize, Promote, and Invest in our Natural Resources</i> by increasing tree canopy and natural areas on site, utilizing stormwater onsite, and increasing floodplain resilience. • <i>Build a Strong Infrastructure</i> by making a permanent Trolley Trail alignment to promote access to safe, affordable active transportation and access to nearby public transportation. • <i>Build Public Trust through Good Government</i> by utilizing a more inclusive engagement process and building partnerships to attract local, regional and state funding that leverages our local dollars. • <i>Grow a Vibrant Economy</i> by providing recreational amenities that can support local economic development potential, both in terms of

	business opportunities relevant to the site in nearby commercial/retail areas and through increased visitation in the area.
Counsel Review	April 19, 2021 (JM)
Procurement Review	N/A
Contact Person	Heather Koch, NCPRD Acting Planning and Development Manager, 503-742-4354 Sarah Eckman, BCS Interim Director, 503-742-4351
Contract No.	N/A

BACKGROUND:

NCPRD partnered with the City of Milwaukie ("City") in 2018-19 to develop a final design to complete 3.6 acres of undeveloped waterfront land at Milwaukie Bay Park. The design includes an amphitheater, nature play area, interactive water feature, plaza with picnic terrace, a permanent alignment for the regional Trolley Trail, pathways, natural areas, public art and restrooms. NCPRD engaged a broad and diverse range of over 1,300 community members in the District during the design phase, advanced a funding strategy to leverage local, regional, state and other funds, and developed a process to build a preconstruction and construction services team in FY20-21. Construction is planned to begin in 2022 pending NCPRD obtaining all permits and approvals, executing a Cooperative Intergovernmental Agreement (IGA) with the City and an IGA specific to the park's construction, and securing all construction funding.

The park is identified as a high priority need in the 2004 NCPRD Master Plan and 2007 NCPRD Parks and Recreation System Development Charges (SDC) Update Methodology Report and Capital Improvements Plan. NCPRD is partnering with the City to complete design and construction documents and construct the park. The City owns the park and NCPRD plans for, develops and manages the City's parks under a Cooperative IGA. The Cooperative IGA was created as part of the formation of the District in 1990, and last amended in 2020 to reflect the adoption of new bylaws for the District Advisory Committee (DAC). An update to this Cooperative IGA and a supplemental IGA specific to the Milwaukie Bay Park construction phase will be executed prior to construction.

This agreement with the Oregon Parks and Recreation Department (OPRD) has a maximum contract value of \$750,000 and requires a 50% match of up to \$750,000. No County General Funds are involved. OPRD funds are specifically provided to develop the nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, water supply, and storm sewer while preserving a mature redwood tree. In March 2020, the Board approved submission of the grant application, which indicated NCPRD would utilize SDC funds to match LGGP funds. SDC funds are available to fund this development as a District-wide amenity. LGGP funds are provided on a reimbursement basis; funds will be provided to NCPRD as reimbursement after regular submittal of progress reports and construction costs. NCPRD expects to incur these costs starting in June 2022 (estimated construction start).

This agreement is effective once signed by all partnering agencies' representatives and terminates by May 31, 2023; provisions for contract extension are included if completion is projected after the termination date. County Counsel has reviewed and approved the Grant Agreement.

The draft funding plan for full funding includes NCPRD SDC funds, City funds, Metro Local Share funds, grants, and private donations, as detailed in the following table. Once the new District Advisory Committee is formed and conducting business, additional discussions are planned to help confirm funding sources. Discussions on use of SDC Zone 1 funds will inform the amount of such funds proposed for use in the project in NCPRD's annual budget proposal each year.

NCPRD's annual budget is subject to approval by the Budget Committee and NCPRD Board. Public discussions on the use of Metro Local Share for this and other projects are planned by NCPRD and are also part of Metro's community engagement requirement prior to finalizing an intergovernmental agreement between Metro and NCPRD on use of Local Share funds.

Draft Funding Plan

Funding Source	Proposed	Agreements*	Status	Est. Date
City of Milwaukie	250,000	20-22 Budget, IGA	IGA signed	Dec 2020
NCPRD SDC Zone 1	2,541,875	NCPRD Budgets	Annual budgeting	Jun 21+
State grant (LGGP)	750,000	Grant Agreement	Agreement pending	May 2021
State grant (LWCF)	1,046,125	Grant Agreement	Agreement pending	July 2021
Metro-City Local Share	750,000	City-Metro IGA	2021 City engagement	Aug 2021
Metro-NCPRD Local Share	3,000,000	NCPRD-Metro IGA	2021 DAC/public process	Aug 2021
Transportation funding	423,525	Agreement	Planning with partners	Aug 2021
Milwaukie Parks Found.	40,000	Letter	Fundraising underway	Fall 2021
NCPRD Gen Fund	48,475	NCPRD Budgets	Annual budgeting	Jun 2022
Metro CIP grant	750,000	Grant Agreement	2021 solicitation	21/22
TOTAL (hard & soft costs)	9,600,000	<i>*Other than City funds, approvals and execution of agreements are pending</i>		

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners of Clackamas County, acting as the Board of Directors of NCPRD, approve the Local Government Grant Program Agreement between the North Clackamas Parks and Recreation District and the Oregon Parks and Recreation Department for Development of Milwaukie Bay Park, and authorizes Sarah Eckman, BCS Interim Director, or the NCPRD Director, to sign on behalf of Clackamas County.

ATTACHMENTS:

1. Local Government Grant Program Agreement with Oregon Parks and Recreation Department and North Clackamas Parks and Recreation District for Milwaukie Bay Park Project
2. Board Order 2020-18 approving submission of LGGP application (March 19, 2020)

Respectfully submitted,



Sarah Eckman, Interim Director
Business and Community Services

Oregon Parks and Recreation Department

Local Government Grant Program Agreement

THIS AGREEMENT (“Agreement”) is made and entered into by and between the State of Oregon, acting by and through its **Oregon Parks and Recreation Department**, hereinafter referred to as “OPRD” or the “State” and the **North Clackamas Parks and Recreation District**, hereinafter referred to as the “Grantee”.

OPRD Grant Number: LG20-005
Project Title: Milwaukie Bay Park Project
Project Type (purpose): Development
Project Description: The project will develop a nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, redwood tree preservation, water supply, and storm sewer at Milwaukie Bay Park in Milwaukie, Oregon. The Project is further described in Attachment A - Project Description and Budget.

Grant Funds /
Maximum Reimbursement: \$ 750,000 (50%)
Grantee Match Participation: \$ 750,000 (50%)
Total Project Cost: \$1,500,000

Grant Payments / Reimbursements: Grant funds are awarded by the State and paid on a reimbursement basis, and only for the Project described in this Agreement, and the original Application included as Attachment B. To request reimbursement, Grantee shall use OPRD’s online grant management system accessible at oprdgrants.org. The request for reimbursement shall include documentation of all project expenses plus documentation confirming project invoices have been paid. Grantee may request reimbursement as often as quarterly for costs accrued to date.

Fiscal Year-End Request for Reimbursement: Grantee must submit a Progress Report and a Reimbursement Request to OPRD for all Project expenses, if any, accrued up to **June 30**, of each fiscal year. The Fiscal Year-End Reimbursement Request must be submitted to OPRD by **July 31**.

Reimbursement Terms: Based on the estimated Project Cost of **\$1,500,000**, and the Grantee’s Match participation rate of **50%**, **the reimbursement rate will be 50%**. Upon successful completion of the Project and receipt of the final reimbursement request, the State will pay Grantee the remaining Grant Funds balance, or **50%** of the total cost of the Project, whichever is less.

Matching Funds: The Grantee shall contribute matching funds or the equivalent in labor, materials, or services, which are shown as eligible match in the rules, policies and guidelines for the Local Government Grant Program. Volunteer labor used as a match requires a log with the name of volunteer, dates volunteered, hours worked, work location and the rate used for match, to be eligible.

Progress Reports: Grantee shall submit Progress Reports with each Reimbursement Request or, at a minimum, at **three month intervals**, starting from the effective date of the Agreement. Progress Reports shall be submitted using OPRD’s online grant management system accessible at oprdgrants.org.

Agreement Period: The effective date of this Agreement is the date on which it is fully executed by both parties. Unless otherwise terminated or extended, the Project shall be completed by **May 31, 2023**. If project is completed before the designated completion date, this Agreement shall expire on the date final reimbursement payment is made by OPRD to Grantee.

Retention: OPRD shall disburse up to 90 percent of the Grant Funds to Grantee on a cost reimbursement basis upon approval of invoices submitted to OPRD. OPRD will disburse the final 10 percent of the Grant Funds upon approval by OPRD of the completed Project, the Final Progress Report and the submission of five to ten digital pictures of the completed project site.

Final Request for Reimbursement: Grantee must submit a Final Progress Report, a Final Reimbursement Request and five to ten digital pictures of the completed project site to OPRD within 45 days of the Project Completion Date.

Project Sign: When project is completed, Grantee shall post an acknowledgement sign of their own design, or one supplied by the State, in a conspicuous location at the project site, consistent with the Grantee's requirements, acknowledging grant funding and the State's participation in the Project.

Agreement Documents: Included as part of this Agreement are:

- Attachment A: Project Description and Budget
- Attachment B: Standard Terms and Conditions
- Attachment C: Inadvertent Discovery Plan

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 is as follows, listed from highest precedence to lowest precedence: this Agreement without Attachments; Attachment A; Attachment B; Attachment C.

Contact Information: A change in the contact information for either party is effective upon providing notice to the other party:

Grantee Administrator

Heather Koch
N Clackamas Parks and Rec Dist
150 Beaver Creek RD
Oregon city, OR 97045
503-742-4354
hkoch@ncprd.com

Grantee Billing Contact

Elizabeth Gomez
N Clackamas Parks and Rec Dist
150 Beaver Creek RD
Oregon city, OR 97045
503-742-4352
egomez@ncprd.com

OPRD Contact

Mark Cowan, Coordinator
Oregon Parks & Rec. Dept.
725 Summer ST NE STE C
Salem, OR 97301
503-951-1317
mark.cowan@oregon.gov

Signatures: In witness thereof, the parties hereto have caused this Agreement to be properly executed by their authorized representatives as of the last date hereinafter written.

GRANTEE

By: _____
Signature

Printed Name

Title

Date

Oregon Department of Justice (ODOJ) approved for legal sufficiency for grants exceeding \$150,000:

By: Kristen Gallino
ODOJ Signature or Authorization

Printed Name/Title

by email on March 24, 2021
Date

STATE OF OREGON

**Acting By and Through Its
OREGON PARKS AND RECREATION DEPT.**

By: _____
Daniel Killam, Deputy Director of Administration

Date

Approval Recommended:

By: _____
Michele Scalise, Grants Section Manager

Date

By: _____
Mark Cowan, Grant Program Coordinator

Date

Attachment A: Project Description and Project Budget

OPRD Grant Number: LG20-005
Project Title: Milwaukie Bay Park Project
Grantee Agency: North Clackamas Parks and Recreation District

Project Description:

The project will develop a nature play area, extensive pathways, entry plaza, picnic terrace, restrooms, redwood tree preservation, water supply, and storm sewer at Milwaukie Bay Park in Milwaukie, Oregon.

Project Budget

Nature play area equipment, surfacing and boulder wall	\$ 204,900
Restroom building with service and utility rooms	\$ 149,300
Pedestrian pathways (concrete, gravel, reinforced turf)	\$ 67,300
Pedestrian plaza and promenade	\$ 342,000
Plaza and picnic terrace retaining walls	\$ 230,600
Picnic Terrace	\$ 141,800
Stairs - Concrete and stone	\$ 168,500
Water supply	\$ 30,400
Storm sewer	\$ 120,200
Removal and salvage - existing boulders, sculptures, signage	\$ 25,000
Protection for existing trees and landscape	\$ 20,000
Total Project Cost	\$ 1,500,000

Source of Funding

North Clackamas Parks and Recreation District SDC Funds	\$ 750,000
Total Match	\$ 750,000

Summary

Total Project Cost	\$ 1,500,000
Total Match from Sponsor	\$ 750,000
Grant Funds Requested	\$ 750,000

Attachment B – Standard Terms and Conditions

Oregon Parks and Recreation Department Local Government Grant Program Agreement

1. **Compliance with Law:** Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to implementation of the Project, including without limitation, OAR chapter 736, Division 6 (the Local Government Grant Program administrative rules).
2. **Compliance with Workers Compensation Laws:** All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS.656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included.
3. **Amendments:** This Agreement may be amended only by a written amendment to the Agreement, executed by the parties.
4. **Expenditure Records:** Grantee shall document, maintain and submit records to OPRD for all Project expenses in accordance with generally accepted accounting principles, and in sufficient detail to permit OPRD to verify how Grant Funds were expended. These records shall be retained by the Grantee for at least six years after the Agreement terminates. The Grantee agrees to allow Oregon Secretary of State auditors and State agency staff access to all records related to this Agreement for audit and inspection and monitoring of services. Such access will be during normal business hours, or by appointment. Grantee shall ensure that each of its subgrantees and subcontractors complies with these requirements.
5. **Equipment:** Equipment purchased with Local Government Grant Program funds must be used as described in the Project Agreement and Application throughout the equipment's useful life. The Grantee will notify the State prior to the disposal of equipment and will coordinate with the State on the disposal to maximize the equipment's ongoing use for the benefit of the Local Government Grant Program.
6. **Use of Project Property:** Grantee warrants that the land within the Project boundary described in the Application (Attachment B) shall be dedicated and used for a period of no less than 25 years from the completion of the Project. Grantee agrees to not change the use of, sell, or otherwise dispose of the land within the Project boundary, except upon written approval by OPRD. If the Project is located on land leased from the federal government, the lease shall run for a period of at least 25 years after the date the Project is completed. If the Project is located on land leased from a private or public entity, other than the federal government, the lease shall run for a period of at least 25 years after the date the Project is completed, unless the lessor under the lease agrees that, in the event the lease is terminated for any reason, the land shall continue to be dedicated and used as described in the Project Application for a period of at least 25 years after the date the Project is completed.

Land acquired using Local Government Grant funds shall be dedicated, by an instrument recorded in the county records, for recreational use in perpetuity, unless OPRD or a successor agency consents to removal of the dedication.

7. **Conversion of Property:** Grantee further warrants that if the Grantee converts lands within the Project boundary to a use other than as described in the grant application or disposes of such land by sale or any other means ("Converted Land"), the Grantee must provide replacement land acceptable to OPRD within 24 months of the date of the conversion or disposal or, if the conversion or disposal is not discovered by OPRD until a later date, within 24 months after the discovery of the

conversion or disposal.

If replacement land cannot be obtained within the 24 month period, the Grantee will provide payment of the grant program's prorated share of the current fair market value of the Converted Land to the State. The prorated share is measured by that percentage of the original grant (plus any amendments) as compared to the original Project cost(s). The replacement land must be equal to the current fair market value of the Converted Land, as determined by an appraisal. The recreation utility of the replacement land must also be equal to that of the Converted Land.

If conversion occurs through processes outside of the Grantee's control such as condemnation or road replacement or realignment, the Grantee must pay to the State a prorated share of the consideration paid to the Grantee by the entity that caused the conversion. The State's prorated share is measured by the percentage of the original grant (plus any amendments) as compared to the original Project cost(s).

The warranties set forth in Section 6 and this Section 7 of this Agreement are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **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 Grantee (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 Grantee in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. 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 Grantee is jointly liable with the State (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the Grantee 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 Grantee 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 Grantee'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.

Grantee 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 Grantee'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.

9. **Inspection of Equipment and Project Property:** Grantee shall permit authorized representatives of State, the Secretary, or their designees to perform site reviews of the Project, and to inspect all Equipment, real property, facilities, and other property purchased by Grantee as part of the Project.
10. **Public Access:** The Grantee shall allow open and unencumbered public access to the completed Project to all persons without regard to race, color, religious or political beliefs, sex, national origin or place of primary residence.
11. **Condition for Disbursement:** Disbursement of grant funds by OPRD is contingent upon OPRD having received sufficient funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OPRD, in the exercise of its reasonable administrative discretion, to make the disbursement and upon Grantee's compliance with the terms of this Agreement.
12. **No Third Party Beneficiaries.** OPRD and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as intended beneficiary of the terms of this Agreement.
13. **Repayment:** In the event that the Grantee spends Grant Funds in any way prohibited by state or federal law, or for any purpose other than the completion of the Project, the Grantee shall reimburse the State for all such unlawfully or improperly expended funds. Such payment shall be made within 15 days of demand by the State.
14. **Termination:** This Agreement may be terminated by mutual consent of both parties, or by either party upon a 30-day notice in writing, delivered by certified mail or in person to the other party's contact identified in the Agreement. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for Project costs incurred prior to date of termination. Full credit shall be allowed for reimbursable expenses and the non-cancelable obligations properly incurred up to the effective date of the termination.
15. **Governing Law:** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties. No

waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. 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 Grantee, by signature of its authorized representative on the Agreement, acknowledges that the Grantee has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

17. **Notices:** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Grantee contact or State contact at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may hereinafter indicate. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received, or five days after mailing.
18. **Counterparts:** This agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.
19. **Severability:** If any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Reviewed by ODOJ 3/18/21 MC

ATTACHMENT C

ARCHAEOLOGICAL INADVERTENT DISCOVERY PLAN (IDP)

Archaeological materials are the physical remains of the activities of people in the past. This IDP should be followed should any archaeological sites, objects, or human remains be found. Archaeological materials are protected under Federal and State laws and their disturbance can result in criminal penalties.

This document pertains to the work of the Contractor, including any and all individuals, organizations, or companies associated with the project.

WHAT MAY BE ENCOUNTERED

Archaeological material may be found during any ground-disturbing activity. If encountered, all excavation and work in the area **MUST STOP**. Archaeological objects vary and can include evidence or remnants of historic-era and pre-contact activities by humans. Archaeological objects can include but are not limited to:

- **Stone flakes, arrowheads, stone tools, bone or wooden tools, baskets, beads.**
- Historic building materials such as **nails, glass, metal** such as cans, barrel rings, farm implements, **ceramics, bottles, marbles, beads.**
- Layers of **discolored earth** resulting from hearth fire
- Structural remains such as **foundations**
- **Shell Middens** (mounds)
- **Human skeletal remains** and/or **bone fragments** which may be whole or fragmented.

If in doubt call it in.

DISCOVERY PROCEDURES: WHAT TO DO IF YOU FIND SOMETHING

1. Stop ALL work in the vicinity of the find
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer—work may continue outside of this buffer
3. Notify Project Manager and Agency Official
4. Project Manager will need to contact a professional archaeologist to assess the find.
5. If archaeologist determines the find is an archaeological site or object, contact SHPO. If it is determined to *not* be archaeological, you may continue work.

HUMAN REMAINS PROCEDURES

1. If it is believed the find may be human remains, stop ALL work.
2. Secure and protect area of inadvertent discovery with 30 meter/100 foot buffer, then work may continue outside of this buffer with caution.
3. Cover remains from view and protect them from damage or exposure, restrict access, and leave in place until directed otherwise. **Do not take photographs. Do not speak to the media.**

4. Notify:
 - Project Manager
 - Agency Official
 - Contracted Archaeologist (if applicable)
 - Oregon State Police - **DO NOT CALL 911** 503-378-3720
 - SHPO (State Historic Preservation Office) 503-986-0690
 - LCIS (Legislative Commission on Indian Services) 503-986-1067
 - Appropriate Native American Tribes (as provided by LCIS)
5. If the site is determined not to be a crime scene by the Oregon State Police, do not move anything! The remains should continue to be *secured in place* along with any associated funerary objects, and protected from weather, water runoff, and shielded from view.
6. Do not resume any work in the buffered area until a plan is developed and carried out between the State Police, SHPO, LCIS, and appropriate Native American Tribes, and you are directed that work may proceed.

CONFIDENTIALITY

The Agency and employees shall make their best efforts, in accordance with federal and state law, to ensure that its personnel and contractors keep the discovery confidential. The media, or any third-party member or members of the public are not to be contacted or have information regarding the discovery, and any public or media inquiry is to be reported to the Agency. Prior to any release, the responsible agencies and Tribes shall concur on the amount of information, if any, to be released to the public.

To protect fragile, vulnerable, or threatened sites, the National Historic Preservation Act, as amended (Section 304 [16 U.S.C. 470s-3]), and Oregon State law (ORS 192.501(11)) establishes that the location of archaeological sites, both on land and underwater, shall be confidential.

From: [CLEARANCE ORSHPO * OPRD](#)
To: [COWAN Mark * OPRD](#)
Subject: RE: LG20-005 Milwaukie Bay Park - N Clackamas Parks and Rec Dist.
Date: Tuesday, March 23, 2021 6:42:32 AM
Attachments: [image002.jpg](#)

THIS E-MAIL CONFIRMS RECEIPT OF AN ELECTRONIC SUBMISSION FOR SHPO REVIEW. Thank you.

The assigned SHPO Case Number is 21-0418. Refer to this case number on any future correspondence.

If no response is received from the SHPO within 30 calendar days from receipt of this submittal, it means reviewers did not have any concerns and your responsibilities under ORS 358.653 are fulfilled and the project may proceed as it appears in the submitted scope of work. If your submission was a project review, a requirement of a County permit process, or other similar request, you may consider this email as SHPO approval once the 30-day review period has ended and you have not received any other responses. The 30-day SHPO response period for this project ends after 3/30/2021.

Please retain this email for your records.

In the event an archaeological object or site (i.e., historic [circa 1800-1945] or prehistoric) is encountered, all project activities at the location of the find should cease immediately until a professional archaeologist can be contacted to document and assess the discovery. Under state law (ORS 358.920 & ORS 97.745) archaeological sites, objects and human remains are protected on both public and private land in Oregon.

From: COWAN Mark * OPRD
Sent: Monday, March 1, 2021 10:24 AM
To: CLEARANCE ORSHPO * OPRD <ORSHPO.Clearance@oregon.gov>
Subject: LG20-005 Milwaukie Bay Park - N Clackamas Parks and Rec Dist.

SHPO review is requested for the following Local Government Grant Program project:

LG20-005 Milwaukie Bay Park - N Clackamas Parks and Rec Dist.

Attachments typically include:

- Submittal Form
- Clearance Form
- Maps
- Site Plan / Construction Plan
- Photos

Thanks,



Request for Reimbursement Guide

All **Progress Reports** and **Reimbursement Requests** must be submitted using OPRD's online grant application and management system. An account with OPRDgrants.org is required for access.

For detailed instruction on how to submit Progress Reports and Reimbursement Requests, see the ***Grant Reporting and Reimbursement Instructions*** at:

- > oprdrants.org
- > Grant Programs
- > Local Government
- > Management & Reporting Requirements
- > ***Grant Reporting and Reimbursement Instructions***

All files for projects benefiting from Oregon Parks and Recreation Department administered grant funds must be able to pass a State audit. When preparing to submit a Request for Reimbursement, plan on submitting the following documentation:

- Progress Report**
- Project Bills / Invoices**
- Bill Payment Confirmation** – Please submit documentation confirming that all project bills/invoices have indeed been paid. The best way to document this is with some type of **Accounts Paid Report** or **Check Ledger Report** for the project that lists **Payments, Payee, Payment Date** and **Check Number**. (This is different from an Accounts Payable Report which would only list payments pending.) If an Accounts Paid Report is not available, please submit copies of canceled payment checks (with account numbers blocked out).

Once the project is completed . . .

- Project Pictures** – Please plan to submit 5-10 digital pictures of the completed project site, for the project file. Digital pictures can be attached to any Progress Report or Request for Reimbursement. For **Planning Projects**, rather than pictures, please submit a digital copy of the final **Planning Document**.

- Acknowledgement Sign** - Is there any type of signage on site acknowledging OPRD grant support for the project? If not, we will send you one.

If you have questions, please contact:

Mark Cowan
Grant Program Coordinator
mark.cowan@oregon.gov
503-951-1317
<https://www.oregon.gov/oprd>

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

In the Matter of authorizing the North Clackamas Parks and Recreation District to apply for a Local Government Grant from the Oregon Parks and Recreation Department for development of Milwaukie Bay Park



Order No. 2020-18
Page 1 of 2

Whereas, the Oregon Parks and Recreation Department (OPRD) is accepting applications for the Local Government Grant Program; and

Whereas, the North Clackamas Parks and Recreation District (NCPRD) desires to participate in this grant program to the greatest extent possible as a means of providing needed park and recreation improvements and enhancements; and

Whereas, Milwaukie Bay Park is a park in downtown Milwaukie owned by the City of Milwaukie ("City") and operated and maintained by NCPRD in accordance with an approved Intergovernmental Agreement that also states that NCPRD may undertake improvements to parks under the jurisdiction of the City; and

Whereas, the NCPRD Advisory Board and the Clackamas County Board of Commissioners, acting as the Board of Directors of NCPRD, have identified completion of the Special Use Park (formerly "Riverfront Park") providing District-wide service as "Priority 1" in the 2004 NCPRD Master Plan and 2007 NCPRD Parks and Recreation System Development Charges (SDC) Update Methodology Report and Capital Improvements Plan; and

Whereas, the City approved a 2010 Master Plan for the park, led two initial phases of the park's development, and approved plans calling for its completion, including the Downtown and Riverfront Landuse Framework Plan (2015) and the Milwaukie Vision Action Plan (2017); and

Whereas, NCPRD and the City have worked together to revise the City-approved 2010 Master Plan with the April 2019 100% Final Schematic Design to complete the park; and

Whereas, the full project includes development of approximately three acres that remain undeveloped on the nearly seven-acre park site. The major improvements designed include: permanent alignment on site for the regional multi-use Trolley Trail; ADA-compliant access throughout the site; amphitheater and stage; nature play area; interactive water feature; plaza with picnic terrace; pathways; plantings and natural areas; public art; and restrooms; and

Whereas, the grant application requests funding for discrete applicable portions of this work, and will be combined with other local funds and grant funds;

Whereas, NCPRD has available local matching funds to fulfill its share of obligation related to this grant application should the grant funds be awarded; and

Whereas, NCPRD will provide adequate funding for ongoing operations and maintenance of this park and recreation facility should the grant funds be awarded; and

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

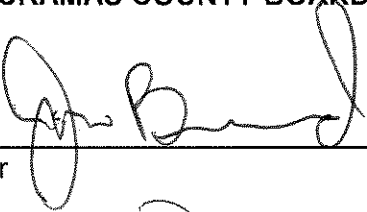
In the Matter of authorizing the North
Clackamas Parks and Recreation
District to apply for a Local Government
Grant from the Oregon Parks and
Recreation Department for
development of
Milwaukie Bay Park

} Order No. 2020-18

NOW, THEREFORE, IT IS HEREBY ORDERED that the Clackamas County Board of Commissioners, acting as the Board of Directors of NCPRD, demonstrates its support for the submittal of a grant application to the NCPRD for development of Milwaukie Bay Park and does hereby authorize NCPRD to apply for approximately \$750,000 for site improvements; as specified above.

DATED this 19 day of March 2020

CLACKAMAS COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary



June 10, 2021

Board of County Commissioners
 Clackamas County
 Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of Notice to Renew Lease Agreement Fourth Amendment/Extension with Phoenix Investment Group and North Clackamas Parks and Recreation District for District's Maintenance Shop

Purpose/Outcome	Continuation of the lease agreement for the District's Maintenance Shop located at 6199 SE Lake Rd, Milwaukie, Oregon 97222.
Dollar Amount and Fiscal Impact	\$295,968 over 3 years 2022 – \$95,964 2023 – \$98,628 2024 – \$101,376
Funding Source	NCPRD General Fund 213-50-5006-500604-46150
Duration	January 1, 2022 through December 31, 2024, 3 years
Previous Board Action/Review	7/17/2012 Policy Session – Directed staff to proceed with lease negotiations with Phoenix Investment Group 12/06/2012 Business Meeting – Approved Lease Agreement for NCPRD Maintenance Shop. 6/6/2015 NCPRD extended the original lease agreement an additional three years, through December 2018. 7/12/2018 NCPRD extended the third lease extension an additional three years through December 31, 2021
Strategic Plan Alignment	1. Honor, utilize, promote and invest in our natural resources- NCPRD staff housed at this site, invest in planting and maintaining pollinators throughout its park system. NCPRD's natural Resource team is housed at this site and engages community members with clean up and planting events. 3. Grow a vibrant economy. Maintenance operations houses NCPRD's workforce to maintain the infrastructure of NCPRD's park system.
Counsel Review	If item is a contract, including IGAs, leases, or other binding agreements, please put in the date of County Counsel Review and the initials of the attorney performing the review. 1. 5/13/2021

	2. JM
Procurement Review	This Item is a Lease 1. Was the item processed through Procurement? No 2. If no, provide brief explanation: This item is a lease.
Contact Person	Kandi Ho, <i>NCPRD Acting Director</i> , 503-794-8001 Kevin Cayson, <i>Parks and Facilities Manager</i> , 503-789-4570
Contract No.	N/A

BACKGROUND:

From 1996 to 2012, NCPRD’s maintenance operations were based at a shared space in Milwaukie that they were rapidly outgrowing. With direction from the Board, the District evaluated numerous alternatives for relocating the shop and discussed these options with the Board during a study session on July 17, 2012. The Board directed staff to move forward with a three-year lease agreement at that time. NCPRD entered into the lease with Phoenix Investment Group Inc. and moved operations to its current location—6199 SE Lake Rd, Milwaukie, Oregon—in December of 2012.

NCPRD park maintenance and natural resource operations are currently located in this leased facility. This facility is centrally located and houses all the District’s maintenance vehicles and equipment. The space also provides much-needed indoor shop space to repair and maintain the District’s equipment and other assets, as well as office space for maintenance and natural resources staff based at the shop.

On June 6, 2015, NCPRD extended the original lease agreement an additional three years, through December 2018.

On July 12, 2018 NCPRD extended the third lease extension an additional three years through December 31, 2021

While NCPRD is still exploring opportunities to locate or build an owned maintenance facility, particularly following the acquisition of three additional properties from the North Clackamas School District, no determinations have been made.

At this time, the District anticipates remaining in the current leased location for the term of this lease amendment. This third amendment would extend the lease agreement through December 2024.

RECOMMENDATION:

Staff respectfully recommends the Board approve the Fourth Amendment/Extension to the Lease Agreement and sign the notice to renew with Phoenix Investment Group, and requests

the Board delegate authority to the BCS Director or designee to effectuate any document necessary to effectuate the same.

ATTACHMENTS:

1. Original Lease Agreement between Phoenix Investment Group and North Clackamas Parks and Recreation District
2. Second Amendment/Extension to Lease Agreement with Phoenix Investment Group
3. Third Amendment/Extension to Lease Agreement with Phoenix Investment Group
4. Written Notice to Renew

Respectfully submitted,

A handwritten signature in blue ink that reads "Sarah Eckman". The signature is written in a cursive, flowing style.

Sarah Eckman, Interim Director
Business and Community Services



BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

May 11, 2021

Todd Call, President
Phoenix Investment Group, Inc.
16074 SE 106th, Suite 100
Clackamas, OR 97015

SUBJECT: Lease renewal, 6199 SE Lake Road, Milwaukie, OR

Dear Mr. Call,

This letter gives notice to Phoenix Investment Group, INC (landlord) that North Clackamas Parks and Recreation District (tenant) is exercising the option to renew the current lease as outlined in Section 1. Extension of the Third Amendment /Extension with Phoenix Investment Group Lease (attached) to renew for one (1) successive term of three (3) years. The renewal term shall commence on January 1, 2022 and expire December 31, 2024 ("Renewal Term").

Sincerely,

X

Tootie Smith
NCPRD Board - Chair

RECORDING MEMO

New Agreement/Contract
Amendment/Change Order Original Number
Policy, Reports

ORIGINATING COUNTY
DEPARTMENT:

_____ NCPRD _____

PURCHASING FOR:

_____ Maintenance Shop Lease _____

OTHER PARTY TO
CONTRACT/AGREEMENT:

_____ Phoenix Investment Group, Inc. _____

BOARD AGENDA DATE: 12/06/2012 _____

AGENDA ITEM NUMBER: 2012-113 _____

PURPOSE:

Finalize negotiations and execute the Lease Agreement for NCPRD Maintenance Shop

Please return to Patrizia Zamboni Coash, NCPRD Administration after recording.

Clackamas County Official Records
Sherry Hall, County Clerk
Commissioners' Journals
Agreements & Contracts

2012-4791

12/27/2012 09:00:01 AM

BEFORE THE BOARD OF
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
OF CLACKAMAS COUNTY, STATE OF OREGON

In the matter of Authorizing
Execution of Lease Agreement
for NCPRD Maintenance Facility



Order No: 2012 - 113
(Page 1 of 1)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board"), acting as the Board of Directors for the North Clackamas Parks and Recreation District ("NCPRD") at its regularly scheduled meeting on December 6, 2012.

WHEREAS, NCPRD has negotiated with Phoenix Investment Group, Inc., ("Landlord") for the lease of 6199 SE Lake Road, Milwaukie, Oregon ("Facility") for a term of three years ("Lease"); and

WHEREAS, the Board desires the leasing of the Facility and utilization of the space by NCPRD maintenance staff; and

WHEREAS, to promote efficient government and timely progress on leasing and moving into the Facility, the Board desires to delegate final signing authority to the Director of NCPRD or his designee.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Director of North Clackamas Parks and Recreation District, or his designee, be and hereby is authorized to finalize negotiations and execute the Lease Agreement, and any and all other agreements or documents necessary to effectuate the timely leasing and moving into the Facility.

Dated this 6th day of December, 2012

CLACKAMAS COUNTY BOARD OF COMMISSIONERS acting as the governing body of the North Clackamas Parks & Recreation District


Chair


Recording Secretary

LEASE AGREEMENT

THIS LEASE AGREEMENT is made effective the 15th day of December, 2012, by and between Phoenix Investment Group, Inc., an Oregon corporation, hereinafter called the ("Landlord") and North Clackamas Parks & Recreation District, a county service district, hereinafter called the ("Tenant"). Landlord and Tenant may be jointly referred to herein as the 'parties' or individually referred to as a 'party'.

Landlord and Tenant hereby agree as follows:

1. **Description.** When used in the Lease Agreement the term "Leased Premises" or "Premises" shall describe a portion of the premises located at 6199 SE Lake Road, Milwaukie, Oregon 97222, in the County of Clackamas, pictorially represented on Exhibit A (attached hereto and hereby incorporated by reference) as Tract 2, and consisting of approximately 1.85 acres, and improved with a shop facility/warehouse, a general office, and asphalt yard. Landlord owns the adjacent real property represented on Exhibit A as Tracts 1 and 3 (herein sometimes collectively referred to as the "Adjacent Property" or individually as "Tract 1" or "Tract 3"). On the Premises there is a truck scale, the general location of which is depicted on Exhibit A. Tenant is not authorized to use the truck scales and Tenant shall permit the use of the truck scales by other tenants. Tenant shall not interfere with such right to use the truck scales, including the right of ingress and egress over the Premises for access to the truck scales.

Access to Tracts 1, 2 and 3 is by a common entrance, as shown in Exhibit A by the word "gate." Tracts 1, 2 and 3 shall each have the right to use the common entrance and the common roadway that serves Tracts 1, 2 and 3 which generally follows the line dividing Tract 1 from Tracts 2 and 3 on Exhibit A.

304 761

2. Term and Renewal.

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning December 15, 2012 and ending December 14, 2015 ("Term"). Unless the context requires otherwise, "Term" shall include the initial Term of 36 months and the renewal term of 36 month if timely and properly exercised. p efforts.

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when the renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, as follows:

2.2.1 The renewal term shall commence on the day following expiration of the initial Term.

2.2.2 The renewal option may be exercised by written notice to Landlord given not less than 180 days prior to the last day of the initial Term. The giving of such notice shall be sufficient to make the Lease binding for the renewal Term on both parties without further act of the parties subject to the rental increase for the renewal Term.

The terms and conditions of the Lease for the renewal Term shall be identical with the Term **except:** monthly Basic Rent will increase; and Additional Rent will increase; and Tenant will have no other option to renew this Lease. Monthly Basic Rent for the renewal term shall be at the market rate that Landlord then charges as mutually agreed by the parties; provided, however, that in no event shall: (1) the initial monthly Basic Rent for the renewal Term exceed the lesser of: the cumulative increase in the Portland, Oregon Consumer Price Index (CPI) all urban consumers, all items on the 1982 = 100 base compounded for the three years of the initial Term or three percent (3%) per year compounded increase in the Basic Rent during the initial Term; but (2) the Basic Rent for the renewal Term will not be lower than \$6,016 per calendar month. The monthly Basic Rent for each year of the renewal Term will increase by 3%.

304 762

3. **Rent.**

3.1 **Basic Rent.** During the Term of the Lease Agreement, Tenant shall pay to the Landlord Basic Rent as follows:

Months 1-12 \$5,579

Months 13-24 \$5,747

Months 25-36 \$6,016

Basic Rent shall be paid in advance on the first day of each calendar month to the address of Landlord set out below or such other address as Landlord provides. Base Rent and Additional Rent shall be prorated as of the date of commencement and expiration if not on the first day of a calendar month.

3.2 **Additional Rent.** All taxes, insurance costs, utility charges, reasonable common area expenses, reasonable maintenance expenses for the Premises paid for by the Landlord, and any other sum which Tenant is required to pay Landlord or third parties by this Lease shall be Additional Rent. Currently, Additional Rent is charged at the rate of approximately \$0.11 per square foot but such amount for the Additional Rent is not fixed for the Term or the renewal Term and Landlord shall give Tenant at least thirty (30) days prior written notice of an increase in the Additional Rent amount. The Additional Rent is intended to compensate Landlord for all expenses relating to the Premises that Landlord pays or incurs such that the Lease is to be triple net meaning that taxes, insurance and all expenses of the Premises are charged to Tenant through the Additional Rent charges. The expenses on the Premises and the Adjacent Property shall be allocated as follows: 57.94% to the Tract 1, 28.17% to the Premises, and 13.89% to Tract 3. Any property tax reductions experienced by the Landlord because of Tenant's status as a municipal corporation shall be fully passed through to the Tenant alone and reduce its share of the triple net charges due.

4. **Deposit.** Upon execution of this Lease, Tenant shall pay to Landlord the total sum of \$12,810. The amount consists of the first month's rent of \$5,579, the first month's Additional Rent of \$1,215 and an additional sum of \$6,016 (the \$6,016 is a "Security Deposit").

The Security Deposit is held by Landlord to secure the faithful performance by Tenant of each term, covenant, and condition of this Lease. If Tenant at any time shall fail to make any payment or fail to keep or perform any term, covenant, and condition on Tenant's part to be made or performed or kept under this Lease, Landlord may, but shall not be obligated, to and without waiving or releasing Tenant from any obligation under this Lease, use, apply or retain the whole or any part of the Security Deposit: (i) to the extent of any sum due to Landlord; (ii) to make any required payment on Tenant's behalf; or (iii) to compensate Landlord for any loss, damage, attorneys' fees or expense sustained by Landlord due to Tenant's default as determined pursuant to Section 28. In such event, Tenant shall, within five days written demand by Landlord, remit to Landlord sufficient funds to restore the Security Deposit to its original sum; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant complies fully with all the terms, covenants, and conditions of this Lease, and at the end of the term of this Lease, leaves the Premises in the condition required by this Lease, then the Security Deposit, less any sums owing to Landlord, shall be returned to Tenant. The amount of the Security Deposit will increase to the amount of the last month's Basic Rent that the Tenant is to pay for the renewal Term and is due and payable on the first day of November, 2015.

5. **Use.**

5.1 **Permitted Use.** The Premises shall be used only for Tenant's service and maintenance facility and related office uses reasonably related thereto, and for no other purpose without the prior written consent of the Landlord.

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

5.2.1 Conform to all applicable laws and regulations, as they now exist or may exist in the future, including but not limited to all Environmental Laws, regulations and ordinances, of any public authority affecting Tenant's use of the Premises, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

5.2.2 Refrain from any activity which would increase the costs to Landlord to insure the Premises against casualty losses;

5.2.3 Except as may be permitted under Section 5.1, refrain from any activity which would be reasonably offensive to Landlord and/or users of the Adjacent Property.

5.2.4 Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the prior written consent of Landlord, which will not be unreasonably withheld. Landlord has consented to installation of a sign on the fascia of the building provided Landlord is given accurate schematics and layout of the signs. No lighted signs, of any type, are permitted. Landlord's approval is contingent of Tenant obtaining appropriate governmental approval for the signage.

5.2.5 Refrain from discharging onto the Premises or Adjacent Property any Hazardous Material or waste or any toxic substance as defined by any law, rule, regulation or governmental regulatory body. For the purposes of this section, the proper storage, care, transport, use, generation, and/or disposal (collectively "Use") of any hazardous substance or material shall not be a "discharge" provided Tenant's Use shall be in conformance with all applicable laws, rules and regulations, including Environmental Laws and Tenant shall use the highest degree of care in the use, handling, storage and/or disposal of Hazardous Materials;

5.2.6 Conduct Tenant's operations in an environmentally clean and safe manner in compliance with all Environmental Laws as defined herein.

304 765

5.2.7 Restrict all parking of vehicles of the Tenant, its agents or employees that are visitors or users of the Premises to the Leased Premises.

5.2.8 Not interfere with and to allow free access to the truck scales at all times.

6. **Taxes and Utilities.**

6.1 **Property Taxes.** Tenant shall pay as due all taxes on Tenant's personal property located on the Premises. Landlord and Tenant agree that the payment of real property taxes by Tenant is normal and that not paying real property taxes may result in a below market rent. If Tenant wants a full or partial property tax exemption on either Tenant's personal or real property taxes, Tenant is responsible to obtain any such exemption at Tenant's sole cost and expense. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant.

6.2 **Special Assessments.** If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable during the Term shall be treated the same as the real property taxes.

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

6.4 **Utilities. Separately from the Additional Rent,** Tenant shall pay for all utilities, including without limitation, gas, heat, light, power, telephone, cable, internet, telecommunication, sewer, landscaping, and other utilities and services supplied to the Premises,

together with any taxes thereon.

7. **Landlord's Repairs and Maintenance.**

7.1 **During Term of Lease.** Subject to Tenant complying with Section 5.2, Landlord shall maintain in good condition the structural components of the Premises and the HVAC system and the plumbing provided any repairs and/or replacements are not required because of negligence or intentional acts or failure to act by the Tenant. Such maintenance, repair and/or replacement for the Premises are a charge passed through to Tenant as a part of the Additional Rent which shall be adjusted by the Landlord at least annually. All such charges for common areas, as the Landlord determines, are part of the Additional Rent. For purposes of this Subparagraph 7.1 "structural components" are the foundations, bearing and exterior walls (but not painting), and the roof of the Premises.

7.2 **Prior to Lease Commencement.** Landlord shall deliver the Premises to Tenant broom-clean and ready for occupancy with all water, sewer, electrical, gas, HVAC, roof and foundation systems in good working order and condition. Other than the provisions in the first sentence of this subparagraph, the Tenant takes the Premises AS-IS, WHERE-IS, and the Landlord has no obligation to make any Tenant improvements except the Landlord shall decommission the existing bridge crane.

8. **Tenant's Repairs and Maintenance.** Tenant shall maintain and keep the Premises and appurtenances thereto in the same condition as when received, except as otherwise provided in this Lease. Tenant shall surrender the Premises to Landlord in at least as good condition as when received, normal wear and tear excepted. Tenant shall be liable to Landlord for any damage to the Premises, including the truck scales and/or resulting from a breach of this Lease or the negligence or willful acts or omissions of Tenant, its agents and employees. Tenant's repair and maintenance obligation includes, but is not limited to: (a) the

repair of the asphalt yard areas (including repair of "spidering" as it occurs); (b) the exterior paint, as needed; (c) the interior paint, as needed; (d) all glass; (e) interior wall repair; (f) plumbing from the fixture to the sewer line; and (g) all other areas of the Premises except for those maintenance obligations specifically reserved to Landlord.

9. **Alterations.** Landlord must grant prior written approval to any alterations, additions, or changes made by Tenant to the Premises, which approval shall not be unreasonably withheld or unreasonably conditioned. At the time Landlord consents to any such alternations, additions, or changes to be made or placed in or on the Premises by Tenant, Landlord and Tenant shall agree as to whether such alterations may be removed by Tenant at the termination of this Lease. If such alterations are removed, the Tenant shall be responsible to restore the Premises to such a condition as to comply with this Lease.

10. **Insurance and Indemnity.**

Liability Insurance. Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the term of this Lease a liability self insurance, with single limit Bodily Injury and Property Damage coverage for the protection of Landlord and Tenant, against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such self insurance shall be in an amount not less than \$1,000,000.00 per occurrence. The policy shall also insure performance by Tenant of the indemnity provisions of this Lease. The limits of said self insurance shall not, however, limit the liability of Tenant hereunder. Tenant shall provide reasonable evidence that Landlord is an additional insured on Tenant's self insurance and an additional insured for any reinsurance that Tenant has for claims over one million dollars.

10.2 Property Insurance. The Landlord shall obtain and keep in force at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, with extended coverage and loss of rents for the full replacement value of the Premises.

Such insurance shall provide for payment of loss there under to Landlord or to the holders of mortgages or deeds of trust on the Premises. Tenant shall insure its own personal property as it deems appropriate and Landlord has no liability for any loss and/or damages to Tenant's personal property. Landlord reserves the right to pass through the costs of the property insurance for the Premises to Tenant.

10.3 Insurance Policies. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to herein.

10.4 Indemnity. Except to the extent arising out of Landlord's willful or gross negligent acts, Tenant shall indemnify, save, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any other activity, work, or things done, permitted or suffered by Tenant in or about the Premises or elsewhere, and shall further indemnify, save and defend and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence or act of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, expenses, damages and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense.

10.5 Waiver of Subrogation. Neither the Landlord nor the Tenant shall be liable to the other for loss arising out of damage to or destruction of the Leased Premises, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Landlord or

Tenant, or by any of their respective invitees, servants or employees. It is the intent and agreement of the Landlord and Tenant that the insurance carriers of the Landlord or Tenant shall not be entitled to subrogation under any circumstances against any party to this Lease. Neither the Landlord nor the Tenant shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint assured.

11. **Destruction of the Premises**. If, during the Term or any renewal hereof, the Premises or part thereof is destroyed or damaged, the Tenant shall give immediate notice thereof to Landlord. Upon payment of the insurance proceeds to Landlord, Landlord will use the insurance proceeds or such amount of the insurance proceeds as necessary to repair the damage unless this Lease is terminated as hereinafter provided. If the Premises are damaged to the extent that continued use during the course of repair would be reasonably impracticable, or if the damage exceeds fifty percent (50%) of the then value of the structure before the damage, and occurs within one (1) year before the end of the then-current Term of this Lease, then the Lease may be terminated by either the Tenant or the Landlord by written notice to the other within thirty (30) days of the damage. In the case of such termination, Landlord and Tenant shall have no further obligation under this Lease except that Tenant shall pay rent accrued through the date of the termination. Rent shall be partially abated during the repair of any damage to the extent the Premises are untenantable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant. If Tenant has allowed the insurance to lapse or if the insurance proceeds are inadequate to repair and/or restore the Premises, Tenant shall be solely responsible for all expenses to restore the Premises to the same condition as the Premises were in prior to the loss.

12. **Condemnation**. If the Premises, or a substantial portion of the Premises, is taken under the power of eminent domain or under the threat of the exercise of such power for any

public or quasi-public use, such that its continued use by Tenant would be reasonably impracticable, then this Lease may be terminated as of the date the use of the Premises becomes impracticable. In case of such termination, Landlord and Tenant shall have no further obligations under this Lease except Tenant shall pay rent accrued through the date of termination. Any award or payment for taking or threatening to take all or a portion of the Premises shall be the property of Landlord.

13. **Default of Tenant.**

13.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

13.1.1 The vacation or abandonment of the Premises by Tenant.

13.1.2 The failure by Tenant to make any payment of Rent or any Additional Rent or other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant, provided, however, that Landlord shall not be obligated to send Tenant notice of nonpayment of Rent or Additional Rent any more frequently than once in any 12 month period. No notice is required for the second failure to pay Rent or Additional Rent in such 12 month period and Landlord may immediately seek its default remedies.

13.1.3 The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph 13.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

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13.1.4 (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no force or effect.

14. **Remedies on Default.**

14.1 **Termination.** In the event of a default the Lease may be terminated at the option of Landlord by notice in writing to Tenant. If the Lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. If the Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter and take possession of the Premises. Landlord will give Tenant thirty (30) days written notice to remove all of Tenant's property from the Premises and if Tenant fails to remove any property left on the Premises, Landlord is entitled to remove the property from the Premises and dispose of such property. The Tenant is not excused from paying the Rent and Additional Rent for that time period nor is such period an extension of the Lease. Tenant shall maintain all insurance coverage during such period.

14.2 **Reletting.** Following reentry or abandonment, Landlord may relet the Premises and may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use

or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 **Damages.** In the event of termination on default Landlord shall be entitled to recover the following amounts as damages:

14.3.1 The loss of the rent reserved under the Lease, as and when such rent becomes due, from the date of default until a new tenant begins paying rent, or the Tenant proves with the exercise of reasonable efforts that a new tenant could have been secured.

14.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal and disposal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the premises upon termination and to leave them in the required condition, any remodeling and/or construction costs, court costs, broker commissions, including the portion of the leasing commission prorated over the Term as it applies to the unexpired Term of this Lease on default and advertising costs.

14.3.3 Other damages as permitted by law.

14.4 **Right To Sue More Than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.

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

14.6 **Default by Landlord.** Landlord shall not be in default unless Landlord fails

to perform obligations required of Landlord within thirty (30) days after Tenant sends written notice to Landlord specifying how Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14.7 Interest and Late Charges. Any rent or other payment required by Tenant by this Lease shall, if not paid within ten (10) days after its due date, bear interest at the rate of six percent (6%) per annum from the due date until paid. In addition, if any installment of Rent, Additional Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount as compensation to Landlord for additional costs incurred by Landlord by reason of said late payment. The parties hereby agree that such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder is not a penalty.

14.8 Impounds. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Tenant under the terms of this Lease, Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly Basic Rent, as estimated by Landlord, for real property tax and insurance expenses on the Premises which are payable by Tenant under the terms of this lease if any. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this paragraph are insufficient to discharge the obligations of Tenant to pay such

real property taxes and insurance premiums as the same become due, Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this paragraph may be intermingled with other moneys of Landlord and shall not bear interest. In the event of a default in the obligations of Tenant to perform under this Lease, then any balance remaining from funds paid to Landlord under the provisions of this paragraph may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of real property tax and insurance premiums.

15. Cooperation. Tenant shall cooperate with Landlord to insure the right of all tenants of the Adjacent Property are respected and observed and interfere with such tenants. Landlord shall make all reasonable efforts to insure that the tenants of the Adjacent Property cooperate to insure the rights of Tenant.

16. Compliance.

16.1 Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the Premises and the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

16.2 Environmental Compliance. Tenant shall, at Tenant's own expense, comply with any current or future environmental statutes, ordinances, rules, regulations, and orders affecting Tenant's use of or operation at the Premises ("Environmental Laws"). Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws. Should the Authority determine that a plan for investigation, monitoring, cleanup,

containment, removal, storage or restoration work ("Remedial Work") be prepared and undertaken at the Premises or Adjacent Property because of any spills or discharges of hazardous materials, substances or wastes, or toxic substances (collectively "Hazardous Materials"), including but not limited to, petroleum-based products at the Premises which are caused by Tenant, its agents, its employees, or other parties during the term of this Lease, then Tenant shall, at Tenant's own expense, prepare and submit the required plans for the Remedial Work, including any required financial assurances to the Authority and Landlord and carry out the plans to the satisfaction of the Authority and Landlord. Tenant's obligations under this paragraph shall arise if there is any event or occurrence at the Premises caused by Tenant, its agents, employees or other parties, which requires compliance with the Environmental Laws. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits and other documents required by Landlord to determine the applicability of the Environmental Laws to the Premises, and shall sign the affidavits and other documents promptly when requested to do so by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from all fines, suits, procedures, claims, actions, cost, injury, damage, loss, expense, liabilities, diminution in property value, having litigation costs, remediation charges, monitoring and attorney's fees of any kind arising out of or in any way connected with any spills or discharges of Hazardous Materials, including but not limited, to petroleum-based products at the Premises caused by Tenant, Tenant's agents, Tenant's employees or other parties during the term of this Lease and from all fines, suits, procedures, claims, actions cost, loss, expense, injury, damage, liabilities, and attorney's fees of any kind arising out of Tenant's failure to provide all information, make all submissions and take all actions, including Remedial Work, required by the Authority under the Environmental Laws as a result of spills or discharges at the Premises or the Adjacent Property caused by the Tenant, its agents, its employees or other parties. Tenant's failure to abide by

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the terms of this paragraph shall be restrainable by injunction. The Indemnity provision of this Lease shall apply to all Tenant's obligations under this Section 16.

Tenant shall not install and/or use any underground or aboveground storage tanks for any purpose.

16.3 Monitoring and Reporting Requirements.

16.3.1 Tenant shall promptly supply Landlord with any documents, correspondence and submissions made by Tenant to any Authority that requires submission of any information concerning environmental matters or Hazardous Substances, materials or wastes or toxic substances.

16.3.2 Tenant shall promptly furnish to Landlord true and complete copies of any documents, correspondence and submissions provided by Tenant to the appropriate Authority and any notices, documents, reports, directives and correspondence provided by the Authority to Tenant. Tenant shall also promptly furnish to Landlord true and complete copies of all sampling, tests and other investigation results obtained from any samples, tests and other investigation taken at and around the Premises and the Adjacent Property.

16.4 Conditions Precedent to Assignment and Sublease.

Notwithstanding subparagraph 24.2, if Landlord consents to any assignment or sublet of the Leased Premises under paragraph 24, Tenant shall remain responsible for all obligations under this Section 16.

16.5 Surrender.

16.5.1 On the last day of any Term hereof, or on any sooner termination, Tenant shall, at Tenant's own expense, have complied with any Environmental Laws affecting Tenant's usage or operation at the Premises.

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16.5.2 If at any time Landlord causes the Premises to be sampled, tested or otherwise investigated for environmental taints, and the sampling, tests, or other investigations indicate that Hazardous Materials or other adverse environmental conditions are present at the Premises and that release or discharge of the Hazardous Materials or other adverse environmental conditions occurred during this Lease, then in addition to being responsible to pay for the investigation and cleanup of such releases or discharges or other adverse environmental conditions, Tenant shall pay for the cost of the sampling, testing and other investigation.

17. **Successor Parties.** This Lease, and all provisions thereof, shall be binding upon and inure to the benefit of the heirs, administrators, executors, and permitted successors and assigns of the parties hereto.

18. **Notices.** All notices as required by any of the terms and conditions of this Lease Agreement shall be deemed given when notice is prepared, adequately addressed, and deposited in the United States Mail, postage prepaid. Notice to Landlord and Tenant are adequately addressed as follows:

Landlord	Phoenix Investment Group, Inc. 16074 SE 106 th Ave., #100 Clackamas, Oregon 97015
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Tenant	North Clackamas Parks and Recreation District 150 Beaver Creek Rd., 4 th Floor Oregon City, OR 97045 Attn: Director
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19. [Intentionally Omitted]

20. **Time of Essence.** Time is of the essence.

21. **Subordination.**

21.1 This Lease, at Landlord's option, shall be subordinate to any ground lease,

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mortgage, deed of trust or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground landlord shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

21.2 Tenant agrees to execute any documents required to effectuate an attornment, subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Should Tenant fail to execute such documents within 10 days after written demand, Landlord may execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

22. Estoppel Certificate.

22.1 Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any defaults are claimed. Any such

statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises.

22.2 At Landlord's option, Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance.

22.3 If Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender or purchaser designated by Landlord such financial statements of Tenant as may be reasonably required by such lender or purchaser at Landlord's cost. Such statements shall include the past three years' publicly available audited financial statements of Tenant.

23. Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, doing any repairs, replacements or monitoring that Landlord deems necessary, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary or desirable, or as are Landlord's responsibility hereunder. Landlord may at any time place on or about the Premises any "For Sale" signs and Landlord may at any time during the last year of the Term hereof place on or about the Premises any "For Lease" signs, all without rebate of rent or liability to Tenant.

24. Assignment and Sublease.

24.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which

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consent shall not be unreasonably withheld.

24.2 No Release of Tenant. Landlord's consent to subletting or assignment shall not necessarily release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the Rent and Additional Rent and to perform all other obligations to be performed by Tenant hereunder, but shall be in accordance with the terms and conditions of any consent to sublease or assignment agreement the Landlord and Tenant may execute. The acceptance of Rent and/or Additional Rent by Landlord from any other person and/or entity shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said assignee.

24.3 Involuntary Assignment in Bankruptcy. If this Lease is deemed to be property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code 11 USC §101, et seq. (the "Bankruptcy Code") any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq. shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

24.4 Holdover

24.4.1 If Landlord withholds its consent to a holdover tenancy by Tenant

and Tenant does not vacate the Premises at the time required, such holdover shall be deemed wrongful and Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150 percent of the rent last paid by Tenant during the Term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply.

24.4.2 Should the parties agree to a holdover tenancy by Tenant, such holdover shall be on a month-to-month basis on the same terms and conditions, including Rent and Additional Rent. The tenancy shall be terminable upon thirty (30) days written notice by either party.

24.4.3 Attorney's Fees. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act Tenant proposes to do then Tenant shall pay Landlord's reasonable attorneys fees and other costs incurred in connection therewith to the extent they exceed \$200.


25. **Survival.** The provisions of Sections 5.2.1, 5.2.4, 5.2.5, 5.2.6, 6.1, 6.4, 8, 9, 10 14.3 and 16 survive the expiration or earlier termination of the Lease.

26. **Broker.** Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder has been engaged by them, respectively, except for Capacity Commercial Group who represented Landlord and except for KW Commercial who represented Tenant. Upon full execution of this Lease and payment of the Deposit, Landlord shall pay to Capacity Commercial Group the total sum of \$6,243.12 and to Keller Williams Commercial the total sum of \$6,243.12. These payments are the only amounts

28.2 Binding Arbitration. After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County.

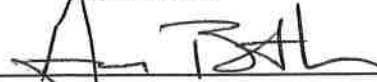
IN WITNESS WHEREOF, the respective parties have executed this Lease as of the day and year first written above.

Phoenix Investment Group, Inc.

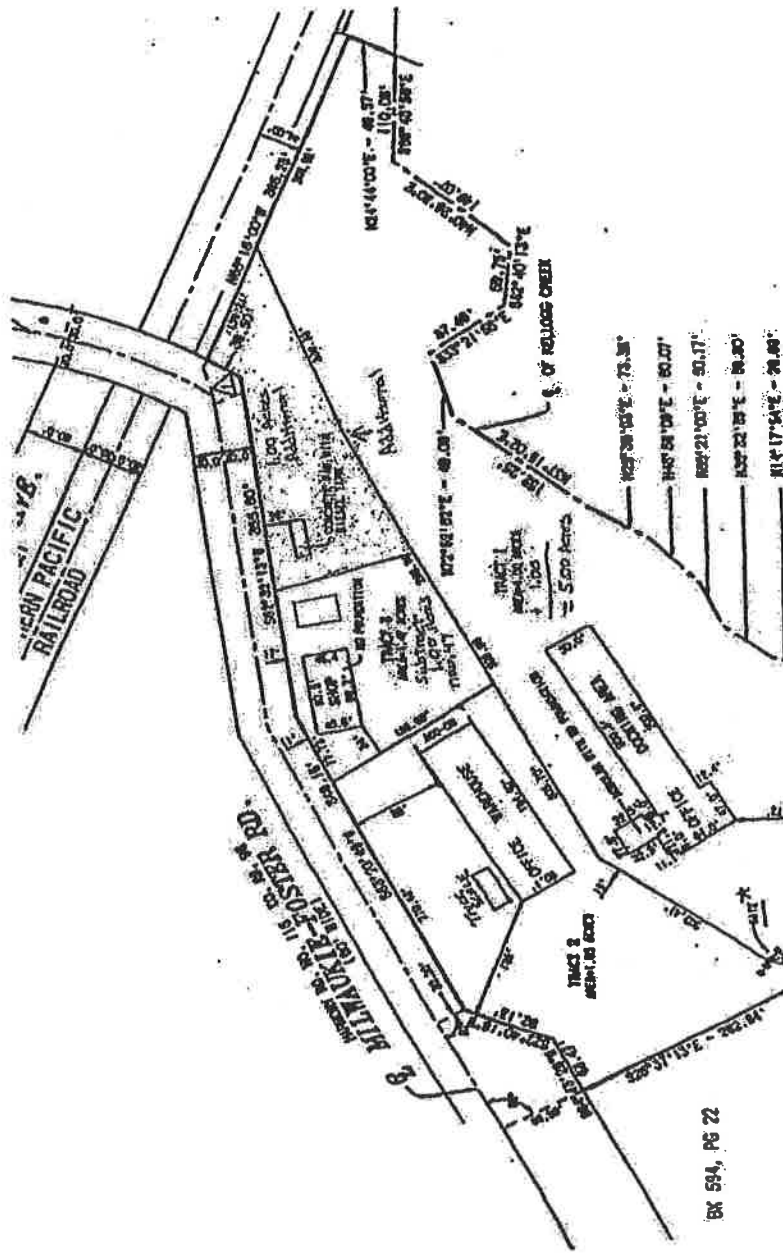


By: Todd Call, President

North Clackamas Parks and Recreation District



By: Gary Barth, Director



BK 59A, PG 22

**SECOND AMENDMENT/ EXTENSION
TO
LEASE AGREEMENT
BETWEEN
PHOENIX INVESTMENT GROUP, INC.
AND
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Second Amendment /Extension to that certain Lease Agreement originally dated effective as of the 15th day of December, 2012 and subsequently amended to be effective as of December 26, 2012 between Phoenix Investment Group, Inc. defined as the "**Landlord**" therein and North Clackamas Parks & Recreation District defined as the "**Tenant**" therein. Landlord and Tenant are jointly referred to as the "**Parties**". The Lease and the First Amendment thereto shall be together referred to herein as the "**Lease**".

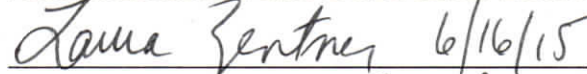
1. **Extension.** Section 2.2 of the Lease provides for a single three (3) year extension of the Term upon terms, provisions and conditions set forth therein. The Landlord acknowledges the timely exercise of the option to renew the Lease. The expiration date of the Lease will now be December 31, 2018. There is no further/additional option or right to renew or extend the Lease beyond December 31, 2018.
2. **Basic Rent on Renewal.** Beginning with the January 1, 2016 payment, Basic Rent increases to \$6,196 per calendar month for 2016; to \$6,382 per calendar month for 2017; and to \$6,573 per calendar month for 2018 [Amending Section 3.1 of the Lease]. All Basic Rent increases are effective as of January 1 of each calendar year of the Renewal Term and without further notice to Tenant.
3. **Additional Rent.** Until the notice in Section 3.2 of the Lease is given, the Additional Rent remains at the sum of \$600 per calendar month, payable with and in addition to each monthly Basic Rent payment.
4. **Deposit.** The Security Deposit set out in Section 4 of the Lease is increased to \$6,573. The difference between the current Security Deposit [\$6,016] and the Security Deposit on Renewal [\$557] shall be paid to Landlord not later than November 1, 2015 as set out in the Lease.
5. **No Improvements.** Landlord has not agreed to make any improvements to the Premises.
6. **Affirmation of other terms.** Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Second Amendment / Extension, the terms of this Second Amendment / Extension control.

Phoenix Investment Group, Inc.

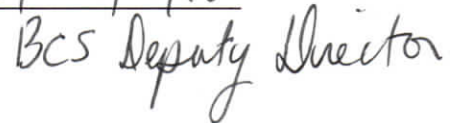


By: Todd Call, President
Dated:

North Clackamas Parks & Recreation District



By: Gary Barth, Director
Dated:



RECORDING MEMO

	New Agreement/Contract
X	Amendment/Change/Extension
	Policy Reports
	Other

**ORIGINATING COUNTY
DEPARTMENT:**

North Clackamas Parks & Recreation District

PURCHASING FOR:

N/A

**OTHER PARTY TO
CONTRACT/AGREEMENT:**

Phoenix Investment Group, Inc.

BOARD AGENDA DATE:

7/12/2018

AGENDA ITEM NUMBER:

IV.2

PURPOSE:

Approval of Amendment No. 3 to a Lease Agreement with
Phoenix Investment Group

Please return to **NCPRD - Attn: Caroline Patton** after recording.

Clackamas County Official Records
Sherry Hall, County Clerk
Commissioners' Journals
Agreements & Contracts

2018-1164

07/23/2018 2:32:44 PM

**THIRD AMENDMENT/ EXTENSION
TO
LEASE AGREEMENT
BETWEEN
PHOENIX INVESTMENT GROUP, INC.
AND
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Third Amendment /Extension to that certain Lease Agreement originally dated effective as of the 15th day of December, 2012, subsequently amended by a First Amendment thereto dated to be effective as of December 26, 2012 and expiring on December 31, 2015; and further amended by a Second Amendment thereto dated to be effective as of December 31, 2015 and expiring as of December 31, 2018. The Lease, the First Amendment thereto and the Second Amendment thereto shall be collectively referred to herein as the "Lease". The Lease is by and between Phoenix Investment Group, Inc. defined as the "Landlord" and North Clackamas Parks & Recreation District defined as the "Tenant". Landlord and Tenant are jointly referred to as the "Parties".

1. Extension. The Lease specifically contains no further/additional option or right to renew or extend the Lease beyond the current expiration date of December 31, 2018. Notwithstanding that provision, the Landlord and Tenant agree to the following changes:

a. Section 2.1 of the Lease is amended by deleting it in its entirety and adding in lieu thereof the following:

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning January 1, 2019 and ending December 31, 2021 ("Term"). Unless the context requires otherwise, "Term" shall run from January 1, 2019 through December 31, 2021 and the Renewal Term of 36 months if timely and properly exercised by Tenant and accepted by Landlord as provided hereinafter shall run from January 1, 2022 through December 31, 2024.

b. Section 2.1 of the Lease is amended by deleting it in its entirety and adding in lieu thereof the following:

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when the Renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, only upon the following terms and conditions:

2.2.1 The renewal term shall commence on January 1, 2022 and expire December 31, 2024 ("Renewal Term"); and

2.2.2 The renewal option may only be exercised by written notice to Landlord received by Landlord not later than July 2, 2021; and

2.2.3 Not later than September 1, 2021, the Landlord notifies Tenant in writing that the Landlord agrees to extend the Lease for the Renewal Term. The Landlord's written notice to Tenant that Landlord agrees to the extension, shall be sufficient to make the Lease binding for the Renewal Term on both Parties without further act of either of the Parties except the following terms, conditions and provisions shall apply for the Renewal Term:

2.2.3.1. The terms and conditions of the Lease for the Renewal Term shall be

identical with those of the Term **except:** (i) monthly Basic Rent will increase as set out in paragraph numbered 2 of this Third Amendment/Extension; (ii) Additional Rent will increase in accordance with the Landlord's notices as provided in the Lease; (iii) the Security Deposit will increase as set out in paragraph numbered 4 of this Third Amendment/Extension; and (iv) Tenant will have no other option to renew/extend this Lease.

2. Basic Rent on Renewal. Section 3.1 of the Lease is deleted in its entirety and in lieu thereof is added the following:

<u>Basic Rent for Calendar Year</u>	<u>Monthly Amount</u>
2019	\$6,770
2020	\$6,973
2021	\$7,182

<u>Basic Rent for Renewal Term¹</u>	<u>Monthly Amount</u>
2022	\$7,397
2023	\$7,619
2024	\$7,848

¹ if timely exercised and accepted by Landlord as provided in 2.2.3 above.

3. Additional Rent. Until the notice in Section 3.2 of the Lease is given, the Additional Rent is \$600.00 for every calendar month of the Term and if timely exercised and accepted by Landlord, the Renewal Term, and is payable with and in addition to each monthly Basic Rent payment.

4. Deposit. The Security Deposit set out in Section 4 of the Lease is increased to \$7,182. The difference [\$609] between the current Security Deposit [\$6,573] and the Security Deposit for the renewal [\$7,182] shall be paid to Landlord not later than November 1, 2018. If the option to renew is timely exercised by Tenant and accepted by Landlord as provided herein, then the Tenant shall, by November 1, 2021, pay an additional Security Deposit amount of \$666 to Landlord.

5. No Improvements. Landlord has not agreed to make any improvements to the Leased Premises during the Term or the Renewal Term, if any.

6. Affirmation of other terms. Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Third Amendment / Extension, the terms of this Third Amendment / Extension control.

Phoenix Investment Group, Inc.

By: Todd Call, President

North Clackamas Parks & Recreation District

By: Laura Zentner, Director
Business & Community Services
Authorized Signer



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between Water Environment Services and Jacobs Engineering Group, Inc., for the
Kellogg Creek Water Resource Recovery Facility Aeration Improvements

Purpose/Outcome	Execution of Contract #4040 for engineering design services for the Kellogg Creek Water Resource Recovery Facility Aeration Improvements Project.
Dollar Amount and Fiscal Impact	Total Contract Value of \$239,947 until May 1, 2022
Funding Source	639-01-20100-481020-P632314
Duration	Contract until May 1, 2022
Previous Board Action/Review	Prior discussions related to budget and Capital Improvements Plan. Issue Discussion 6/1/21, approved to move forward to Business Meeting on 6/10/21.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources. 2. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding.
Counsel Review	AK 5/18/21
Procurement Review	Was this project processed through Procurement? Yes.
Contact Person	Steven Rice, Civil Engineering, 971-284-3710
Contract No.	4040

BACKGROUND:

WES has selected Jacobs Engineering Group to provide engineering services for design of the Kellogg Creek Water Resource Recovery Facility (KC WRRF) Aeration Improvements Project. The KC WRRF was constructed as a conventional secondary treatment facility in 1976. The facility recently underwent a project that included, in part, installation of new aeration blowers to provide air to the biological treatment process. To realize the full benefit of the new blowers, downstream aeration system improvements are needed. The project will assess the condition and consider replacement of aeration system components including air piping, air control valves, actuators, flow meters, diffusers, dissolved oxygen sensors, and SCADA programming. An assessment and potential replacement of flow control gates in and around the aeration basins to enhance peak flow treatment is also included in the project.

Engineering recommendations will be documented in a preliminary design report, followed by development of bid-ready contract documents. Anticipated services also include support during the bidding phase. Additional services, such as construction administration, inspection, or start-up support may be added by future amendment.

PROCUREMENT PROCESS: This project was advertised in accordance with ORS and LCRB Rules on January 6, 2021. Proposals were opened on February 4, 2021. The District received two (2) proposals: Jacobs Engineering Group, Inc. and HDR Engineering, Inc. The Evaluation Committee selected Jacobs Engineering Group, Inc. as the highest ranking proposer and recommended a contract be awarded. Following award, the Project Manager entered into negotiations with Jacobs Engineering Group, Inc. and developed a final statement of work, along with final billing rates and contract value.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Jacobs Engineering Group, Inc. for the KC WRRF Aeration Improvements Project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist", with a horizontal line extending to the right.

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



**WATER ENVIRONMENT SERVICES
PERSONAL SERVICES CONTRACT
Contract #4040**

This Personal Services Contract (this “Contract”) is entered into between **Jacobs Engineering Group, Inc.**, (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”).

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **May 1, 2022**.
- 2. Scope of Work.** Contractor shall provide the following personal services: **RFP# 2021-02 Kellogg Creek WRRF Aeration System Improvement Design** (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **Two Hundred Thirty-Nine Thousand Nine Hundred Forty-Seven dollars (\$239,947.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. Contractor shall submit invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered. Payments to Contractor shall be made within thirty (30) days of invoice receipt. Payments shall be made in accordance with ORS 293.462 to Contractor following the District’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Steven Rice,
SRice@clackamas.us

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

7. Contractor and District Contacts.

Contractor	District
Administrator: Brady Fuller Phone: 541-318-4716 Email: Brady.fuller@jacobs.com	Administrator: Steven Rice Phone: 971-284-3710 Email: SRice@clackamas.us

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

ARTICLE II.

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

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

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: with limits of \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: with limits of \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: with limits of \$1,000,000 combined single limit for Bodily Injury and Property Damage.

The policy(s) shall be primary insurance except for Workers Compensation, Employers Liability and Professional Liability as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it except for Workers Compensation, Employers Liability and Professional Liability. Any obligation that District agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to District, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during District's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, District shall have no rights in any pre-existing Contractor intellectual property provided to District by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for District use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided. The Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and District shall not be responsible for discovering deficiencies therein. The Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in information furnished by the District.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, and 29, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

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

16. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

18. TAX COMPLIANCE CERTIFICATION. The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

19. TERMINATIONS. This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the District (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the District fails to receive funding, appropriations, or other expenditure authority as solely determined by the District; or (B) if contractor breaches any Contract provision or is declared insolvent, District may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the District, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to District all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work

20. REMEDIES. If terminated by the District due to a breach by the Contractor, then the District shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the District, less any setoff to which the District is entitled.

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

- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by events outside the District or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling District to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the District with such Key Person's services unless the District provides prior written consent to such reassignment or transfer.

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

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

Jacobs Engineering Group, Inc.

Water Environment Services

 5/18/2021
 Authorized Signature Date

 Chair Date

Pat Van Duser / Designated Manager
 Name / Title (Printed)

 Recording Secretary

064469-83
 Oregon Business Registry #

Approved as to Form:

FBC/Delaware
 Entity Type / State of Formation

 5/18/2021
 County Counsel Date

**EXHIBIT B
FEE SCHEDULE**

EXHIBIT A
STATEMENT OF WORK
Agreement for Professional Services for the
Kellogg Creek Water Resources Recovery Facility
Aeration Improvements Project

SCOPE OF SERVICES

The following is a scope of services for professional engineering services during the phased design and bid and award services for the Kellogg Creek WRRF Aeration Improvements Project.

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BACKGROUND

Clackamas County Water Environment Services (District) has identified operational and condition-based improvements required to provide improved process performance and increased reliability of the existing facilities. Recent condition assessment performed by the District during the Willamette Facilities Plan recommended certain upgrades to be incorporated into this project.

GENERAL ASSUMPTIONS

The following key assumptions were used when determining the scope, level of effort compensation to the Consultant. These assumptions are in addition to those included in the Scope of Services.

- 1) The design will be based on standards in effect on the effective date of the authorization to proceed.
- 2) Meetings and Workshops will be held virtually.
- 3) Consultant will submit minutes from each workshop not later than 5 working days following each respective workshop.
- 4) Consultant will use the 49 Division format master specifications.
- 5) Consultant will provide Division 1 and technical specifications for project use with District review and comment.
- 6) Where deliverable documents are identified, hereinafter, five (5) hard copies of the deliverable will be provided in addition to electronic version in .PDF and original .DOC format.
- 7) Drawings (11-inch by 17-inch) in .PDF format will be provided for each District internal review.
- 8) The Consultant's standard CAD software (Microstation) will be used to produce the drawings, in conformance with Jacobs CAD drafting standards which are based on US National CAD standard.
- 9) The site is free of any hazardous wastes, asbestos, lead paint or other types of contamination that might require remediation.
- 10) In providing opinions of cost, financial analyses, economic feasibility projections, and schedules for the Project, Consultant has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate Project cost or schedule. Therefore, Consultant makes no warranty that District's actual Project costs, financial aspects, economic feasibility, or schedules will not vary from Consultant opinions, analyses, projections, or estimates.

DISTRICT-PROVIDED SERVICES

- 1) District will provide to Consultant all known data in District's possession relating to Consultant's services on the Project. Consultant will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by District.
- 2) District will make its facilities accessible to Consultant as required for Consultant's performance of its services. District will perform such no-cost tests of equipment, machinery,

pipelines, and other components of District's facilities as may be required in connection with Consultant's services.

- 3) District will furnish required information, examine deliverables submitted by Consultant, and render decisions and approvals in a timely manner.
- 4) District will give prompt notice to Consultant when District observes or becomes aware of developments that affect the scope or timing of Consultant's services, or of defects in the work of Consultant.
- 5) District will provide Division 0 specifications.
- 6) District will perform required permitting activities.
- 7) District will pre-purchase select equipment and/or materials to minimize schedule impacts. It is anticipated the select items for pre-purchase will include air flow control valves, primary effluent flow control gates, and associated electric actuators.
- 8) District will send diffusers to existing diffuser manufacturer to evaluate condition.
- 9) District will provide to Consultant a BioWin model used on recent facilities plan work.
- 10) Field investigation of air piping to identify leaks and areas of air piping requiring replacement or repair.

Task 1 - Project Management

The purpose the Project Management task is to establish and monitor compliance with project budget and schedule.

Task 1.1 - Progress Meetings and Updates

The Consultant's project manager will meet with District's project manager weekly to review project progress, schedule, and discuss upcoming work activities.

The Consultant's project manager will provide weekly email summaries of work completed, upcoming activities and unresolved issues.

Task 1.2 - Project Management Plan

The purpose of this task is to prepare a project management plan that will be used during the execution of this project work. Specific elements of the plan will include definition of District and Consultant project organization, communication, project cost control procedures, document control, health and safety plan, change management and other project management requirements.

Task 1.3 - Decision Log

The Consultant's project manager will prepare and keep current a decision log documenting key project decisions.

Task 1.4 - Invoicing, Cost and Schedule Control

The Consultant's project manager will manage, administer, coordinate, and integrate work of the Consultant's team as required to deliver the project within budget and on schedule.

Consultant's project manager will prepare and submit to the District's project manager on a monthly basis, an invoice, a brief cost and schedule status report and updated summary project schedule showing actual versus projected.

Deliverables:

- Project Management Plan
- Weekly Project Management meeting notes
- Decision Log
- Monthly status reports and invoices.

Task 2 – Existing System Evaluation

Task Assumptions:

- 1) Assumes the evaluation will include sixteen (16) sets of valves, valve actuators, and dissolved oxygen meters.
- 2) Assumes the evaluation will include gate replacement as follows:
 - a) Retain four existing (4) influent weir slide gates (1 per basin) WG-1 through WG-4 and electric actuators. Provide remote OPEN/CLOSE capability and position feedback.
 - b) Step Feed Gates:
 - i) Replace existing main step feed gate for each basin, leading to existing 30-inch pipe (4) total. Provide new electric actuator for each gate.
 - ii) Replace existing (3) submerged step feed distribution gates bolted to existing 30-inch pipe, per basin (12 total). Provide new electric actuator for each gate.
 - c) Retain existing four (4) effluent gates, (1) per basin SG-1 through SG-4. No changes.
 - d) Retain existing two (2) existing scum gates at east and west end of primary effluent channel, SG-1 and SG-2. No changes.

Task 2.1 Kickoff Meeting

The Kickoff meeting will be scheduled within two weeks of Notice to Proceed. The objective of the 1-hour meeting is to communicate the schedule, critical path items, and discuss project objectives and key decision points. The kickoff meeting will also include scheduling site visits.

Deliverables:

- Kickoff Meeting Agenda and Minutes
- Action Item Log
- Decision Log

Task 2.2 Data Request and Initial Analysis

The purpose of this task is to collect relevant and available information to develop a basic understanding of the existing equipment as it relates to the objectives of this project. It is anticipated that this will occur prior to the Kickoff Meeting. Consultant shall perform an initial analysis of the District provided information including SCADA historical data and existing documentation relevant to the aeration basins and surrounding areas .

Deliverables:

- Email request for information.

Task 2.3 Site Visits to Operating Facilities

Conduct site visits to WWTP facilities in Portland area with District O&M staff to view alternative instrument and communications systems. Assume one day of site visits plus travel by Consultant, including Project Manager OR Design Manager, and Senior Instrumentation and Controls Engineer.

- Salmon Creek Treatment Plant – YSI probes.
- Vancouver Westside – E+H probes

Task 2.4 Procurement Support of Owner Furnished Equipment and Materials

Prepare equipment specifications (draft and final), and support District procurement of select materials and equipment. This task includes an allowance for submittal review of Owner-furnished equipment and materials.

Deliverables:

- Draft equipment technical specifications
- Final equipment technical specifications

Task 3 – Preliminary Design (30%)

The preliminary design will build on topics discussed during the kickoff meeting along with existing data and site specific knowledge.

Task 3.1 Workshop 1 (Review Vendor and Control Alternatives)

Workshop 1 will be approximately 2 hours and will be attended by Project Manager, Design Manager, Senior Instrumentation and Controls Engineer, and Process Engineer. The goal of the workshop will be to review vendor and control alternatives related to primary effluent flow splitting, RAS piping improvements, Profibus vs Profinet evaluation, air distribution piping improvements and air header piping improvements.

Deliverables:

- Workshop Agenda & Materials
- Workshop 1 Meeting Minutes
- Action Item Log Update
- Decision Log Update

Task 3.2 Workshop 2 (Confirm Equipment, Control Approach, and Basis of Design)

Workshop 2 will be a 2 hour workshop held approximately one week after the 30% design submittal and will be attended by the Project Manager, Design Manager, Corrosion Engineer, Process Engineer, and Senior Instrumentation and Controls Engineer. The workshop will confirm equipment and approach to the project and provide resolution to comments on the basis of design.

Deliverables:

- Workshop Agenda & Materials
- Workshop 2 Meeting Minutes
- Action Item Log Update
- Decision Log Update

Task 3.3 Preliminary Design Report

The purpose of this task is to finalize and document the design approach in preliminary design report. The report will be used as the Basis of Design for the 90% Contract Documents.

Deliverables:

- Draft/Final Preliminary Design Report Summarizing the design approach
 - Final Equipment Selections
 - Final Control Methods Approach
 - Recommendations for
 - Traditional plug flow and wet weather step feed operation control schemes with primary effluent flow triggers for implementing step feed mode.
 - Step Feed Aeration Gates
 - Extent of required repair of leaking aeration piping and replacement of low pressure air piping segments.
 - Features to improve low pressure air system redundancy
 - Replacement spray water piping and nozzles
 - RAS meter, piping improvements.
- Preliminary P&IDs
- Preliminary Control Block Diagram (PLC/HMI Network Diagram)
- Design Review Meeting Agenda & Materials
- Design Review Meeting Minutes
- Action Item Log Update
- Decision Log Update

Task 4 – Draft Contract Documents (90% Deliverables)

Task 4.1 – Mid-Point Design Review

The purpose of the mid-point design review workshop is to address design items typically addressed at the 60% phase of the project without formal review documents.

Deliverables:

- Workshop Agenda & Materials
- Mid-Point Design Workshop Meeting Minutes
- Action Item Log Update
- Decision Log Update

Task 4.2 – Draft Contract Documents (90% Deliverables)

The purpose of the draft contract document task is to finalize the design pending District's review and feedback on the contract. All specifications and drawing will be completed to the 90% level or greater.

Deliverables:

- Stamp/sealed drawings for outside agency permit review, if required
- Process Control Narratives
- Draft Contract Documents
 - Draft Construction Specification Including (Division 00 & 01)
 - Draft Plans and Drawings

Task 4.3 Draft Contract Document Review Workshop

The draft contract review workshop will be held virtually approximately one week after the draft contract documents are submitted and reviewed.

Deliverables:

- Workshop Agenda & Materials
- Contract Document Review Workshop Meeting Minutes
- Action Item Log Update
- Decision Log Update

Task 5 – Final Contract Documents (100% / Bid Deliverables)

The purpose of this task is to incorporate District comments, final bid documents, seal them and deliver them to the District.

Deliverables:

- Bid Contract Documents
 - Bid Specifications
 - Bid Plans and Drawings

Task 6 Quality Management

As part of each design phase, the Consultant will carry out a quality assurance program (QAP). The purpose of this QAP is to monitor the quality of the Project through the use of internal quality assurance/quality control (QA/QC) reviews as described herein. The Consultant will manage multidiscipline internal QA/QC review activities with senior review team. A QC review will be performed on process and cost calculations. A formal internal QA/QC review will be performed prior to the District review of deliverables.

A Quality Management Plan (QMP) will be prepared for the project to serve as a guide for all phases of the project. Key features of the QMP will include:

- A single point of contact responsible for all quality management.
- Independent quality review performed by discipline-specific quality reviewers to provide critical analysis without bias.
- Procedures for engineers; detailed checks of reports, calculations, drawings and specifications.

Audits by QA personnel will be conducted to verify conformance with the approved QMP and confirm that required checking and review functions are completed.

Design quality review documentation will demonstrate that quality review process is complete and review comments are acceptably addressed as a component of the overall records management system. The following documentation will be prepared, collected and properly stored in the project records system:

- Quality review forms used during internal quality reviews and issue tracking forms used to document those issues.
- Design review forms used by the District to document review comments
- Project checklists or milestone checklists, signed by the reviewer and the appropriate project staff
- Review-related correspondence with District staff and other external agencies or entities

- Audit correspondence, including results and corrective action documentation

The level of effort for this task includes preparation of the QMP and QC reviews for each of the design phases.

Deliverables:

- Quality Management Plan
- Written documentation of QC reviews

Task 7 - Bid Phase Services

Consultant shall provide services to assist the District in selection of a single Contractor assigned to construct the project.

The budget and level of effort included herein for this task is an allowance for use as directed by District staff. Consultant will provide services under this task up to the limits of the budget allocated. These services are expected to consist of the following.

Task 7.1 Preparation and Delivery of Bid Documents

Consultant will print hard copies of bid documents and addenda for Consultant and District team to use during the bid period.

Deliverables:

- Ten (10) sets bid documents for use by the District during bidding.

Task 7.2 Respond to Bidder Questions

It is assumed that the Procurement Officer will be the contact for receipt of bidder questions.

Consultant will provide technical interpretation of the Bid Documents and will prepare, for District Project Manager or Procurement Officer approval, proposed responses to all proposers' substantive questions and requests, which may be in the form of addenda. Responses to bidder questions will be provided by District to bidders. Substantive questions will be questions that cannot be answered by referral of proposers to unambiguous Bid Documents and the associated specifications and drawings for resolution and require Consultant's interpretation or clarification by addenda.

Deliverables:

- Log of bid questions with responses in Excel and PDF format.

Task 7.3 Attend Pre-Bid Conference

Consultant will assist the District and Construction Manager in arranging and conducting one pre-bid conference. In consultation with District, Consultant will develop the draft agenda and content of the pre-bid conference. Consultant will take minutes or make other provisions for documenting the results of the pre-bid conference. Also, Consultant will record all questions and requests for additional information and shall assist with responses. District will issue responses and additional information.

Deliverables:

- Preparation of pre-bid conference minutes, and coordinate issuance of responses and additional information.

Task 7.4 Prepare Addenda

Jacobs will prepare all Addenda to the Bid Documents to be issued by the County Procurement Division. A maximum of one addendum is assumed. Addenda will be approved by the District.

Deliverables:

- Addenda during bid period.

Task 7.5 Evaluate Bids

This task is an allowance to support District evaluation of bids.

Deliverables:

- As mutually agreed with District.

Task 7.6 Conformed Documents

Jacobs will incorporate addenda during bidding phase into the contract documents.

Deliverables:

- Two (2) full-size sets and twelve (12) half-size sets of conformed drawings; twelve sets of specifications.
- Two USB flash drives with electronic files (PDF format).

Drawing List

No.	Dwg. No	Drawing Name	Notes
1		Title, Location And Vicinity Maps And Index To Drawings	
2		Abbreviations -1	
3		Abbreviations -2	
4		Overall General Legend And Flow Stream Identification	
5		Design Criteria - 1	
6		Ground Level Process Plan	
7		Concrete coating plan, sections, details 1	
8		Concrete coating plan, sections, details 2	
9		Concrete coating plan, sections, details 3	
10		Mechanical Details	
11		Electrical Legend - 1	
12		Electrical Legend - 2	
13		Electrical Area Classification Plan - 1 (Existing Facilities)	
14		Electrical Room Partial Plan	
15		Cable Block Diagrams	
16		Panel Schedules	
17		Electrical Details	
18		Instrumentation And Control Legend - 1	
19		Instrumentation And Control Legend - 2	
20		Network Diagram	
21		P&ID AB 1	
22		P&ID AB 2	
23		P&ID AB 3	
24		P&ID AB 4	
25		Control Panel Plan/Elevation	

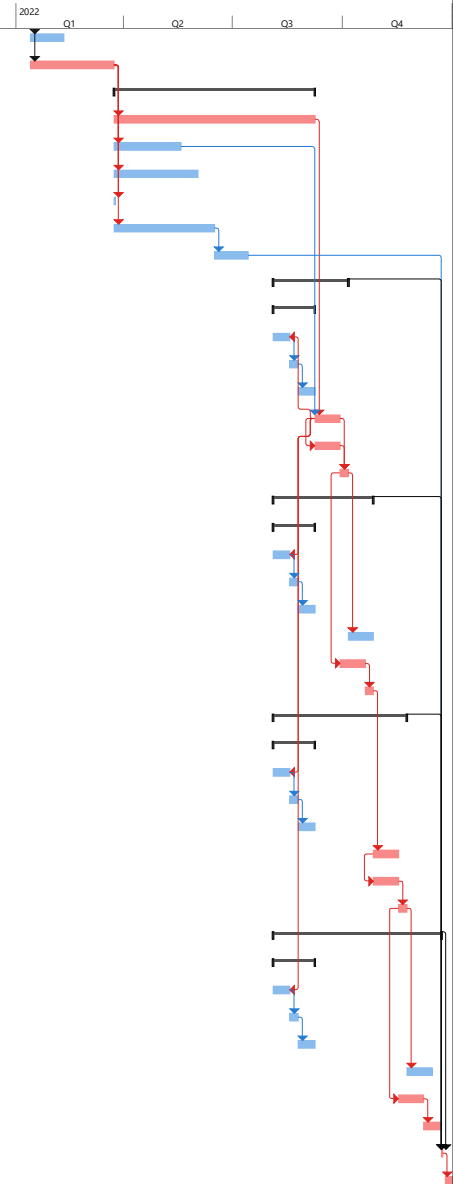
Attachment 2 – Anticipated Specifications List

Division 01—General Requirements	
01 11 00B	Summary of Work
01 31 13B	Project Coordination
01 31 19B	Project Meetings
01 32 00B	Construction Progress Documentation
01 33 00B	Submittal Procedures
01 42 13B	Abbreviations and Acronyms
01 43 33B	Manufacturers' Field Services
01 45 16.13B	Contractor Quality Control
	Special Inspection, Observation, and Testing
01 45 33B	Tables: Special Inspection, Observation, and Testing (2006, 2009, or 2012 IBC)
01 45 36B	Equipment Seismic Certification
01 50 00B	Temporary Facilities and Controls
01 57 13B	Temporary Erosion and Sediment Control
01 64 00B	Owner-Furnished Products
01 77 00B	Closeout Procedures
01 78 23B	Operation and Maintenance Data
01 88 15B	Anchorage and Bracing
01 91 14B	Equipment Testing and Facility Startup
Division 02—Existing Conditions	
02 41 00B	Demolition
Division 03—Concrete	
03 01 32B	Repair of Vertical and Overhead Concrete Surfaces
03 01 33B	Repair of Horizontal Concrete Surfaces
03 15 00B	Concrete Joints and Accessories
03 62 00B	Grouting
Division 09—Finishes	
09 90 00B	Painting and Coating
09 90 01B	Paint System Data Sheet (PSDS)
09 90 02B	Paint Product Data Sheet (PDS)

Division 22—Plumbing	
22 10 01.02B	Polyvinyl Chloride Drain Waste and Vent Pipe and Fittings (Data Sheet)
Division 26—Electrical	
26 05 02B	Basic Electrical Requirements
26 05 33B	Raceway and Boxes
Division 40—Process Interconnections	
40 05 15B	Piping Support Systems
40 27 00B	Process Piping General
40 27 00.01B	Ductile Iron Pipe and Fittings (Data Sheet)
40 27 00.05B	Carbon Steel Pipe and Fittings (Data Sheet)
40 27 01B	Process Piping Specialties
40 27 02B	Process Valves and Operators
40 80 01B	Process Piping Leakage Testing
40 90 00B	Instrumentation and Control for Process Systems
40 91 00B	Instrumentation and Control Components
40 xx xx	Fabricated Slide Gates
44 xx xx	Fine Bubble Aeration Diffuser Systems

**Hood River WWTP Digester Mixing Study
Project Schedule**

ID	Task Name	Duration	Start	Finish	Predecessors	Free Slack	2021				2022								
							Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4				
47	Mobilization	20 days	Thu 1/13/22	Wed 2/9/22	46	248 days													
48	Submittals	50 days	Thu 1/13/22	Wed 3/23/22	46	0 days													
49	Equipment and Material Lead Time	120 days?	Thu 3/24/22	Wed 9/7/22		0 days?													
50	Valves and Actuators (16 to 24 week lead time)	120 days	Thu 3/24/22	Wed 9/7/22	48	0 days													
51	Instruments	40 days	Thu 3/24/22	Wed 5/18/22	48	80 days													
52	Electrical and I&C	50 days	Thu 3/24/22	Wed 6/1/22	48	168 days													
53	Diffuser System	1 day?	Thu 3/24/22	Thu 3/24/22	48	217 days?													
54	Piping and valves for blower system discharge piping	60 days	Thu 3/24/22	Wed 6/15/22	48	0 days													
55	Blower Discharge Piping Modifications	20 days	Thu 6/16/22	Wed 7/13/22	54	116 days													
56	Basin 1 Improvements	45 days	Thu 8/4/22	Wed 10/5/22		25 days													
57	Concrete coatings and repair	25 days	Thu 8/4/22	Wed 9/7/22		76 days													
58	surface preparation	10 days	Thu 8/4/22	Thu 8/18/22	61SF-15 days	0 days													
59	coatings	5 days	Thu 8/18/22	Wed 8/24/22	58	0 days													
60	curing and touch up	10 days	Thu 8/25/22	Wed 9/7/22	59	76 days													
61	Mechanical	15 days	Thu 9/8/22	Wed 9/28/22	51,50	0 days													
62	Electrical and I&C	15 days	Thu 9/8/22	Wed 9/28/22	61SS	0 days													
63	Startup and Commissioning	5 days	Thu 9/29/22	Wed 10/5/22	62,61	0 days													
64	Basin 2 Improvements	60 days	Thu 8/4/22	Wed 10/26/22		40 days													
65	Concrete coatings and repair	25 days	Thu 8/4/22	Wed 9/7/22		76 days													
66	surface preparation	10 days	Thu 8/4/22	Thu 8/18/22	61SF-15 days	0 days													
67	coatings	5 days	Thu 8/18/22	Wed 8/24/22	66	0 days													
68	curing and touch up	10 days	Thu 8/25/22	Wed 9/7/22	67	76 days													
69	Mechanical	15 days	Thu 10/6/22	Wed 10/26/22	63	41 days													
70	Electrical and I&C	15 days	Thu 9/29/22	Wed 10/19/22	63SS	0 days													
71	Startup and Commissioning	5 days	Thu 10/20/22	Wed 10/26/22	70	0 days													
72	Basin 3 Improvements	80 days	Thu 8/4/22	Wed 11/23/22		21 days													
73	Concrete coatings and repair	25 days	Thu 8/4/22	Wed 9/7/22		76 days													
74	surface preparation	10 days	Thu 8/4/22	Thu 8/18/22	61SF-15 days	0 days													
75	coatings	5 days	Thu 8/18/22	Wed 8/24/22	74	0 days													
76	curing and touch up	10 days	Thu 8/25/22	Wed 9/7/22	75	76 days													
77	Mechanical	15 days	Thu 10/27/22	Wed 11/16/22	71	0 days													
78	Electrical and I&C	15 days	Thu 10/27/22	Wed 11/16/22	77SS	0 days													
79	Startup and Commissioning	5 days	Thu 11/17/22	Wed 11/23/22	78	0 days													
80	Basin 4 Improvements	101 days	Thu 8/4/22	Thu 12/22/22		0 days													
81	Concrete coatings and repair	25 days	Thu 8/4/22	Wed 9/7/22		76 days													
82	surface preparation	10 days	Thu 8/4/22	Thu 8/18/22	61SF-15 days	0 days													
83	coatings	5 days	Thu 8/18/22	Wed 8/24/22	82	0 days													
84	curing and touch up	10 days	Thu 8/25/22	Wed 9/7/22	83	76 days													
85	Mechanical	15 days	Thu 11/24/22	Wed 12/14/22	79	6 days													
86	Electrical and I&C	15 days	Thu 11/17/22	Wed 12/7/22	79SS	0 days													
87	Startup and Commissioning	11 days	Thu 12/8/22	Thu 12/22/22	86	0 days													
88	Substantial Completion	1 day?	Fri 12/23/22	Fri 12/23/22	55,56,64,72,80	0 days?													
89	Closeout	20 days	Mon 12/26/22	Fri 1/20/23	88	0 days													
90	Final Completion	1 day?	Mon 1/23/23	Mon 1/23/23	89	0 days?													
91		1 day?	Mon 1/23/23	Mon 1/23/23		0 days?													



Task	Summary	Inactive Milestone	Duration-only	Start-only	External Milestone	Critical Split
Split	Project Summary	Inactive Summary	Manual Summary Rollup	Finish-only	Deadline	Progress
Milestone	Inactive Task	Manual Task	Manual Summary	External Tasks	Critical	Manual Progress

**EXHIBIT B
FEE SCHEDULE**



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment # 1 to Contract # 4085 between Water Environment Services
and Metro Presort, Inc. for
Utility Bill Printing and Mailing Services

Purpose/Outcome	<i>Execution of the Amendment # 1 for Contract #4085 between Water Environment Services and Metro Presort, Inc. for Utility Bill Printing and Mailing Services</i>
Dollar Amount and Fiscal Impact	<i>Additional compensation of \$350,000 (\$175,000 annually). Total amended contract value of \$1,225,000.</i>
Funding Source	<i>WES Funds (631-01-10300-421110 and 631-01-10300-431600)</i>
Duration	<i>Extends contract through June 30, 2023.</i>
Previous Board Action/Review	<i>Original contract entered November 9, 2016. Board Issues on June 1, 2021.</i>
Strategic Plan Alignment	1. Customers will continue to benefit from a well-managed utility. 2. Build public trust through good government.
Counsel Review	1. <i>Date of Counsel review: 5/12/2021</i> 2. <i>Initials of County Counsel: AK</i>
Procurement Review	1. Was the item processed through Procurement? Yes.
Contact Person	<i>Erin Blue, Financial Administrative Services Manager, (503)742-4585</i>
Contract No.	<i>4085</i>

BACKGROUND:

Clackamas Water Environment Services (“WES”) directly bills approximately 21,000 residential accounts and 1,000 commercial accounts every month. WES currently contracts with Metro Presort for the associated printing and mailing services. The original contract, entered into on November 9, 2016, provided an option for two (2) additional two (2) year renewals. This amendment exercises that option and extends the term of the current contract from June 30, 2021 to June 30, 2023 and adds additional compensation of \$350,000 for monthly bill printing and mailing to continue serving WES’ customers.

PROCUREMENT PROCESS:

The original contract went through competitive bidding process RFP 2016-02. The resulting contract from this RFP was Contract#4085. The original contract terms was for 5 years through June 30, 2021, with an option for two (2) additional two (2) year renewals thereafter subject to mutual agreement. The parties desire to exercise the first of two two-year renewals provided for in the contract, extending the contract expiration date from June 30, 2021 to June 30, 2023.

RECOMMENDATION:

Staff recommends the Board approve the Amendment to the Contract with Metro Presort, Inc. for utility bill printing and mailing services.

Respectfully submitted,

A handwritten signature in blue ink that reads "Greg Geist". The signature is written in a cursive style with a long horizontal stroke at the end.

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.

**AMENDMENT #1
TO THE CONTRACT DOCUMENTS WITH METRO PRESORT, INC. FOR UTILITY
BILLING PRINTING AND MAILING SERVICES
Contract #4085**

This Amendment #1 is entered into between **Metro Presort, Inc.** (“Contractor”) and Water Environment Services (“District”) and shall become part of the Contract documents entered into between both parties on **November 9, 2016** (“Contract”).

The Purpose of this Amendment #1 is to make the following changes to the Contract:

1. ARTICLE I. Term is hereby amended as follows:

The parties desire to exercise the first of two two-year renewals provided for in the Contract. Contract expiration date is changed from June 30, 2021 to **June 30, 2023**.

2. ARTICLE III. Compensation is hereby amended as follows:

The additional compensation for the renewal of two (2) years of service shall not exceed a total contract value of three hundred fifty thousand dollars (**\$350,000.00**). The maximum annual compensation authorized shall not exceed one hundred seventy-five thousand dollars (\$175,000.00) per year.

ORIGINAL CONTRACT	\$ 875,000.00
<u>AMENDMENT #1</u>	<u>\$ 350,000.00 + Time</u>
TOTAL AMENDED CONTRACT	\$ 1,225,000.00

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #1, effective upon the date of the last signature below.

Metro Presort, Inc.

DocuSigned by:

 5/18/2021
C5D36268E89246B

Authorized Signature Date
 Brad Barton

Printed Name


Water Environment Services

Chair

Recording Secretary

Date

Approved as to form

 5/19/2021

County Counsel Date

4086_Metro_Presort_Inc_Final

Final Audit Report

2021-05-20

Created:	2021-05-19
By:	Qudsia Sediq (QSediq@clackamas.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFEy3fmflr__58EzfgUFdt0FyrdsqFvXv

"4086_Metro_Presort_Inc_Final" History

 Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)


2021-05-18 - 7:11:29 PM GMT- IP address: 73.37.89.221

 Document created by Qudsia Sediq (QSediq@clackamas.us)

2021-05-19 - 5:00:16 PM GMT- IP address: 73.37.89.221

 Document emailed to Amanda Keller (akeller@clackamas.us) for signature


2021-05-19 - 5:01:02 PM GMT

 Email viewed by Amanda Keller (akeller@clackamas.us)

2021-05-20 - 0:41:11 AM GMT- IP address: 73.25.96.131

 Document e-signed by Amanda Keller (akeller@clackamas.us)

Signature Date: 2021-05-20 - 0:41:38 AM GMT - Time Source: server- IP address: 73.25.96.131

 Agreement completed.

2021-05-20 - 0:41:38 AM GMT



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between Water Environment Services and Paul Brothers Inc., for the Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting Project

Purpose/Outcome	Execution of Contract #4017 for public improvement services for the Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting Project
Dollar Amount and Fiscal Impact	Total Contract Value of \$162,677.00 until 11/1/2021
Funding Source	639-01-20100-481090-P632293
Duration	Contract until November 1, 2021
Previous Board Action/Review	Prior discussions related to budget and Capital Improvements Plan. Issue Discussion 6/1/21.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources. 2. Ensure Safe, Healthy and Secure Communities
Counsel Review	AK 5/17/21
Procurement Review	Was this project processed through Procurement? Yes.
Contact Person	Jeff Stallard, Civil Engineering Supervisor, 503-742-4694
Contract No.	4017

BACKGROUND:

As part of the land use permitting processes for the Tri City Solids Improvements and 82nd Ave Bridge Projects, WES is required to provide mitigation landscaping. This mitigation landscaping requirement is to account for the impacts these projects had on areas within Oregon City's Natural Resource Overlay District and will enhance habitat along the Clackamas River. In addition to this mitigation landscaping, this project also includes plantings for screening along sections of the border of Tri-City Water Resource Recovery Facility (WRRF).

The Work under this Contract will consist of, but is not limited to, furnishing all labor, materials, and equipment necessary to construct the landscaping improvements along the boundary of the Tri-City WRRF. This work includes clearing of invasive species, preparation of planting areas, temporary erosion control, protection of existing trees, installation of the irrigation system, and planting. This work will occur both inside the fenced boundaries of the WRRF and along the adjacent pedestrian and bicycle trail just outside the fence.

PROCUREMENT PROCESS: This project was advertised in accordance with ORS and LCRB Rules on March 18, 2021. Proposals were opened on April 22, 2021. The District received one (1) proposal: Paul Brothers Inc., \$162,677.00. After review of the base bids, Paul Brothers Inc. was determined to be lowest responsive bidder.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Paul Brothers Inc. for the Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting Project.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Greg Geist".

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT CONTRACT
Contract #4017

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

Project Name: #2021-18 Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting Project

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of One Hundred Sixty-Two Thousand Six Hundred Seventy-Seven Dollars (\$162,677.00) (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (1/1/2020) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid as indicated in the accepted Bid.

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

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

2. Representatives.

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

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

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

3. Key Persons.

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

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

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

Job Superintendent: Bill Kithens shall be the Contractor's on-site job superintendent throughout the project term.

Project Engineer: Joey Paul shall be the Contractor's project engineer, providing assistance to the project manager, and subcontractor and supplier coordination throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: 120 days from issuance of NTP

FINAL COMPLETION DATE: 150 days from issuance of NTP

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

5. Change Order Authorization.

Throughout the performance of the Work under this Agreement, the Owner's Project Manager is hereby granted the authority to verbally authorize change orders in the field for an amount up to \$10,000. As soon as possible following the authorization, the Owner's Project Manager shall complete the change order form provided by Clackamas County Procurement ("Procurement"), obtain the signature of Owner's Director or other authorized signatory, and submit the form to Procurement for processing. As soon as the Director signs off on the change order form, the Project Manager may then authorize another change order in the future for up to \$10,000 following the same procedure above. Each change order should include the cumulative cost of the entire change and may not be artificially broken up into multiple change orders to fall under the dollar threshold listed above. The authority granted to the Project Manager is limited by the Director's authorization to amend the Agreement under Clackamas County's Local Contract Review Board Rules and is subject to the discretion of the Director, who may suspend or restrict the Project Manager's ability to authorize change orders at any time for any reason.

6. Insurance Certificates.

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

7. Tax Compliance.

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

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to

Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

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

9. Counterparts.

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

10. Integration.

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

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

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

12. Responsibility for Taxes. Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Contract or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session). Contractor may not include its federal, state, or local tax obligations as part of the cost to perform the Work.

Signature page to follow.



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT OPPORTUNITY

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**CLACKAMAS COUNTY
NOTICE OF PUBLIC IMPROVEMENT CONTRACT OPPORTUNITY**

**INVITATION TO BID #2021-18
Tri-City Water Resource Recovery Facility (“WRRF”) Mitigation Planting
March 18, 2021**

Clackamas County (“County”) on behalf of Water Environment Services through its Board of County Commissioners is accepting sealed bids for the Tri-City Water Resource Recovery Facility (“WRRF”) Mitigation Planting Project until **April 22, 2021, 2:00 PM**, Pacific Time, (“Bid Closing”) at the following location:

DELIVER BIDS TO: Clackamas County Procurement Division via email to procurement@clackamas.us.

Bidding Documents can be downloaded from ORPIN at the following address:

<http://orpin.oregon.gov/open.dll/welcome>, Document No.C01010-2021-18-21.

Prospective Bidders will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Bidders are responsible for obtaining any Addenda from Website listed above.

Contact Information

Procurement Process and Technical Questions: Tralee Whitley, twhitley@clackamas.us

Prevailing Wage

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

PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2021, which can be downloaded at the following web address: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx
The Work will take place in Clackamas County, Oregon.

Clackamas County encourages bids from Minority, Women, and Emerging Small Businesses.



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

INSTRUCTIONS TO BIDDERS

Clackamas County Local Contract Review Board Rules (“LCRB Rules”) govern this procurement process. LCRB Rules may be found at: <http://www.clackamas.us/code/documents/appendixc.pdf>. The Instructions to Bidders is applicable to the procurement process for Clackamas County, or any component unit thereof identified on the Notice of Public Improvement Contract Opportunity, herein after referred to as the “Owner.”

Article 1. Scope of Work

The work contemplated under this contract with the Owner, includes all labor, materials, transportation, equipment and services necessary for, and reasonably incidental to, the completion of all construction work in connection with the project described in the Project Manual which includes, but is not necessarily limited to, the Notice of Public Improvement Contract Opportunity, Instructions to Bidders, Supplemental Instructions to Bidders, Bid Form, Bid Bond, Public Improvement Contract Form, Performance Bond, Payment Bond, Clackamas County General Conditions for Public Improvement Contracts (1/1/2020), Supplemental General Conditions, and Plans, Specifications and Drawings.

Article 2. Examination of Site and Conditions

Before making a Bid, the Bidder shall examine the site of the work and ascertain all the physical conditions in relation thereto. The Bidder shall also make a careful examination of the Project Manual including the plans, specifications, and drawings and other contract documents, and shall be fully informed as to the quality and quantity of materials and the sources of supply of the materials. Failure to take these steps will not release the successful Bidder from entering into the contract nor excuse the Bidder from performing the work in strict accordance with the terms of the contract at the

price established by the Bid.

The Owner will not be responsible for any loss or for any unanticipated costs, which may be suffered by the successful Bidder, as a result of such Bidder's failure to be fully informed in advance with regard to all conditions pertaining to the work and the character of the work required, including site conditions. No statement made by an elected official, officer, agent, or employee of the Owner in relation to the physical or other conditions pertaining to the site of the work will be binding on the Owner, unless covered by the Project Manual or an Addendum.

Article 3. Interpretation of Project Manual and Approval of Materials Equal to Those Provided in the Specifications

If any Bidder contemplating submitting a Bid for the proposed contract is in doubt as to the true meaning of any part of the plans, specifications or forms of contract documents, or detects discrepancies or omissions, such Bidder may submit to the Architect (read "Engineer" throughout in lieu of Architect as appropriate) a written request for an interpretation thereof at least ten (10) calendar days prior to the date set for the Bid Closing.

When a prospective Bidder seeks approval of a particular manufacturer's material, process or item of equal value, utility or merit other than that designated by the Architect in the Project Manual, the Bidder may submit to the Architect a written request for approval of such substitute at least ten (10) calendar days prior to the date set for the Bid Closing. The prospective Bidder submitting the request will be responsible for its prompt delivery.

Requests of approval for a substitution from that specified shall be accompanied by samples, records of performance, certified copies of tests by

impartial and recognized laboratories, and such other information as the Architect may request.

To establish a basis of quality, certain processes, types of machinery and equipment or kinds of materials may be specified in the Project Manual either by description of process or by designating a manufacturer by name and referring to a brand or product designation or by specifying a kind of material. Whenever a process is designated or a manufacturer's name, brand or item designation is given, or whenever a process or material covered by patent is designated or described, it shall be understood that the words "or approved equal" follow such name, designation or description, whether in fact they do so or not.

Any interpretation of the Project Manual or approval of manufacturer's material will be made only by an Addendum duly issued. All Addenda will be posted to the ORPIN listing and will become a part of the Project Manual. The Owner will not be responsible for any other explanation or interpretation of the Project Manual nor for any other approval of a particular manufacturer's process or item for any Bidder.

When the Architect approves a substitution by Addendum, it is with the understanding that the Contractor guarantees the substituted article or material to be equal or better than the one specified.

Article 4. Security to Be Furnished by Each Bidder

Each Bid must be accompanied by either 1) a cashier's check or a certified check drawn on a bank authorized to do business in the State of Oregon, or 2) a Bid bond described hereinafter, executed in favor of the Owner, for an amount equal to ten percent (10%) of the total amount Bid as a guarantee that, if awarded the contract, the Bidder will execute the contract and provide a performance bond and payment bond as required. The successful Bidder's check or Bid bond will be retained until the Bidder has entered into a contract satisfactory to Owner and furnished a one hundred percent (100%) performance bond and one hundred percent (100%) payment bond. The Owner

reserves the right to hold the Bid security as described in Article 10 hereof. Should the successful Bidder fail to execute and deliver the contract as provided for in Article 12 hereof, including a satisfactory performance bond and payment bond within twenty (20) calendar days after the Bid has been accepted by the Owner, then the contract award made to such Bidder may be considered canceled and the Bid security may be forfeited as liquidated damages at the option of the Owner. The date of the acceptance of the Bid and the award of the contract as contemplated by the Project Manual shall mean the date of acceptance specified in the Notice of Intent to Award.

Article 5. Execution of Bid Bond

Should the Bidder elect to utilize a Bid bond as described in Article 4 in order to satisfy the Bid security requirements, such form must be completed in the following manner:

- A. Bid bonds must be executed on the County forms, which will be provided to all prospective Bidders by the Owner.
- B. The Bid bond shall be executed on behalf of a bonding company licensed to do business in the State of Oregon.
- C. In the case of a sole individual, the bond need only be executed as principal by the sole individual. In the case of a partnership, the bond must be executed by at least one of the partners. In the case of a corporation, the bond must be executed by stating the official name of the corporation under which is placed the signature of an officer authorized to sign on behalf of the corporation followed by such person's official capacity, such as president, etc. The corporation seal should then be affixed to the bond.
- D. The name of the surety must be stated in the execution over the signature of its duly authorized attorney-in-fact and accompanied by the seal of the surety corporation.

Article 6. Execution of the Bid Form

Each Bid shall be made in accordance with: (i) the sample Bid Form accompanying these instructions; (ii) the appropriate signatures for a sole individual, partnership, corporation or limited liability corporation shall be added as noted in Article 5C above; (iii) numbers pertaining to base Bids shall be stated both in writing and in figures; and (iv) the Bidder's address shall be typed or printed.

The Bid Form relates to Bids on a specific Project Manual. Only the amounts and information asked for on the Bid Form furnished will be considered as the Bid. Each Bidder shall Bid upon the work exactly as specified and provided in the Bid Form. The Bidder shall include in the Bid a sum to cover the cost of all items contemplated by the Contract. The Bidder shall Bid upon all alternates that may be indicated on the Bid Form. When Bidding on an alternate for which there is no charge, the Bidder shall write the words "No Charge" in the space provided on the Bid Form. If one or more alternates are shown on the Bid Form, the Bidder shall indicate whether each is "add" or "deduct."

Article 7. Prohibition of Alterations to Bid

Bids that are incomplete, or contain ambiguities or have differing conditions required by the Bidder, including requested changes or exceptions to the Public Improvement Contract form or other portions of the Project Manual, may be rejected in Owner's sole and absolute discretion.

Article 8. Submission of Bid

Each Bid shall be sealed in an envelope, properly addressed to the Owner, showing on the outside of the envelope the name of the Bidder and the name of the project. Bids will be received at the time and place stated in the Notice of Public Improvement Contract Opportunity.

Article 9. Bid Closing and Opening of Bids

All Bids must be received by the Owner at the place and time set for the Bid Closing. Any Bids received after the scheduled Bid Closing time for

receipt of Bids will be rejected.

At the time of opening and reading of Bids, each Bid received will be publicly opened and read aloud, irrespective of any irregularities or informalities in such Bids.

Generally, Bid results will be posted to the Procurement Website within a couple hours of the opening.

Article 10. Acceptance or Rejection of Bids by Owner

Unless all Bids are rejected, the Owner will award a contract based on the lowest responsive Bid from a responsible Bidder. If that Bidder does not execute the contract, it will be awarded to the next lowest responsible Bidder or Bidders in succession.

The Owner reserves the right to reject all Bids and to waive minor informalities. The procedures for contract awards shall be in compliance with the provisions of the LCRB Rules in effect at that time.

The Owner reserves the right to hold the Bid and Bid security of the three lowest Bidders for a period of thirty (30) calendar days from and after the time of Bid opening pending award of the contract. Following award of the contract the Bid security of the three lowest Bidders may be held twenty (20) calendar days pending execution of the contract. All other Bids will be rejected and Bid security will be returned.

In determining the lowest Bidder, the Owner reserves the right to take into consideration any or all authorized base Bids as well as alternates or combinations indicated in the Bid Form.

If no Bid has been accepted within thirty (30) calendar days after the opening of the Bids, each of the three lowest Bidders may withdraw the Bid submitted and request the return of the Bid security.

Article 11. Withdrawal of Bid

At any time prior to the Bid Closing, a Bidder may withdraw its Bid. This will not preclude the

submission of another Bid by such Bidder prior to the time set for the Bid Closing.

After the time set for the Bid Closing, no Bidder will be permitted to withdraw its Bid within the time frames specified in Article 10 for award and execution, except as provided for in that Article.

Article 12. Execution of Contract, Performance Bond and Payment Bond

The Owner will provide the successful Bidder with contract forms within seven (7) calendar days after the completion of the award protest period. The Bidder is required to execute the contract forms as provided, including a performance bond and a payment bond from a surety company licensed to do surety business in the State of Oregon, within seven (7) calendar days after receipt of the contract forms. The contract forms shall be delivered to the Owner in the number called for and to the location as instructed by the Owner.

Article 13. Recyclable Products

Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract.

Article 14. Clarification or Protest of the Solicitation Document or Specifications

Any request for clarification or protest of the solicitation document or specifications must be submitted in the manner provided for in the applicable section of the LCRB Rules to the Procurement Representative referenced in the Notice of Public Improvement Contract Opportunity.

A protest of the Solicitation Document must be received within seven (7) business days of the issuance of the Bid or within three (3) business days of issuance of an addendum.

Requests for clarification may be submitted no less than five (5) business days prior to the Bid Closing Date.

Article 15. Protest of Intent to Award

Owner will name the apparent successful Bidder in a "Notice of Intent to Award" letter. Identification of the apparent successful Bidder is procedural only and creates no right in the named Bidder to the award of the contract. Competing Bidders will be notified by publication of the Notice of Intent to Award on the Clackamas County Procurement Website of the selection of the apparent successful Bidder(s) and Bidders shall be given seven (7) calendar days from the date on the "Notice of Intent to Award" letter to review the file at the Procurement Division office and file a written protest of award, pursuant to C-049-0450. Any award protest must be in writing and must be delivered by hand delivery or mail to the Procurement Division Director at: Procurement Division, 2051 Kaen Road, Oregon City, OR 97045.

Article 16. Disclosure of First-Tier Subcontractors

Within two (2) working hours after the Bid Closing, all Bidders shall submit to the County a disclosure form identifying any first-tier subcontractors (those entities that would be contracting directly with the prime contractor) that will be furnishing labor and materials on the contract, if awarded, whose subcontract value would be equal to or greater than: (a) Five percent (5%) of the total contract price, but at least \$15,000; or (b) \$350,000, regardless of the percentage of the total contract price.

Disclosures may be submitted with the Bid or may be hand delivered to the Bid Closing address or emailed to procurement@clackamas.us.



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT

SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

**Project Name: #2021-18 Tri-City Water Resource Recovery Facility (“WRRF”)
Mitigation Planting**

The following modify the Clackamas County “Instructions to Bidders” for this Project. Where a portion of the Instructions to Bidders has been modified by these Supplemental Instructions to Bidders, the unaltered portions shall remain in effect.

- 1. Submission of Bids by email:** Due to the COVID-19 Emergency, Clackamas County buildings are closed to the public. The County is requiring all bids for this project to be electronically submitted. Complete Bids (including all attachments) may be emailed and must be electronically received by the closing time and date **2:00 p.m. Pacific Time, April 22, 2021.** If emailed, the Bid must be emailed to the following address: Procurement@clackamas.us. The email subject line must be **“Bid for #2021-18 Tri-City Water Resource Recovery Facility (“WRRF”) Mitigation Planting Project.”** Bidders are ***strongly encouraged*** to telephone and confirm electronic receipt of the complete emailed document(s) before the above time and date deadline. Bids delayed or lost by email system filtering or failures may be considered at Clackamas County’s sole and absolute discretion.

Bids will be publicly read aloud via the computer application, Zoom. Bidders will be allowed to video conference or listen by phone to the bid results. The projects Zoom meeting can be accessed via the information below:

ZOOM MEETING INFO

Join Zoom Meeting

<https://clackamascounty.zoom.us/j/88964106591>

Meeting ID: 889 6410 6591

One tap mobile

+13462487799,,88964106591# US (Houston)

+14086380968,,88964106591# US (San Jose)

Dial by your location

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)
Meeting ID: 889 6410 6591
Find your local number: <https://clackamascounty.zoom.us/j/kpM3IZqba>

**The Apparent Low bid results will be posted to the projects OPRIN listing as soon as possible following the bid opening.

- 2. Good Faith Effort:** Clackamas County encourages participation in contracts by Historically Underrepresented Businesses. “Historically Underrepresented Businesses” are State of Oregon-certified and self-identified minority, women and emerging small business as well as firms that are certified federally or by another state or entity with substantially similar requirements as the State of Oregon.

Bidders must perform Good Faith Effort (defined below) and submit **Form 1 and Form 2** for the Bidders Bid to be considered responsive. **Form 1 and Form 2** must be submitted within **two (2) hours** after the Closing Date and Time. Form 1 and Form 2 may be submitted by hand delivery to the location the Bid was due or may email the completed Forms to Procurement@clackamas.us. “Good Faith Effort” is a requirement of a prime contractor to reach out to at least three Historically Underrepresented Business Subcontractors for each division of work that will be subcontracted out and to complete the required forms. If fewer than three Historically Underrepresented Business Subcontractors are reasonably available for a particular division of work, the Bidder must specifically note the reason for there being fewer than three contacts. The outreach should be performed with sufficient time to give the subcontractors at least 5 calendar days to respond to the opportunity. Form 3, which documents the actual amount of subcontractors on the project, must be submitted with the project final pay application. Compliance with the Good Faith Effort and submission of Forms 1, 2 and 3 is a contractual requirement for final payment.

The sufficiency of the documentation or the performance of Good Faith Effort shall be in the sole and absolute determination of Clackamas County. Only those Bidders that Clackamas County has determined have not sufficiently performed Good Faith Effort shall have protest rights of the determination for such Bidder. No Bidder shall have protest rights of the sufficiency of any other Bidder completing Good Faith Effort.

**CLACKAMAS COUNTY
GOOD FAITH EFFORT
SUBCONTRACTOR AND SELF-PERFORMED WORK LIST
(FORM 1)**

Prime Contractor Name: Paul Brothers Inc
Project Name: #2021-18 Tri-City Water Resource Recovery Facility (WRRF) Mitigation Planting

Total Contract Amount: \$1,626,773.00

PRIME SELF-PERFORMING: Identify below ALL GFE Divisions of Work (DOW) to be self-performed. Good Faith Efforts are otherwise required.

DOW BIDDER WILL SELF-PERFORM (GFE not required)	
<u>Landscape</u>	
<u>Mitigation</u>	
<u>Soils</u>	

PRIME CONTRACTOR SHALL DISCLOSE AND LIST ALL SUBCONTRACTORS, including those Minority-owned, Woman-owned, and Emerging Small Businesses ("M/W/ESB") that you intend to use on the project. Hand delivery to Procurement, 2051 Kaen Road, Oregon City, OR 97045 or email to procurement@clackamas.us within 2 hours of the BID/Quote Closing Date/Time

LIST ALL SUBCONTRACTORS BELOW Use correct legal name of Subcontractor (No Assumed Business Names)	Division of Work (Painting, electrical, landscaping, etc.) List ALL DOW performed by Subcontractors	DOLLAR AMOUNT OF SUBCONTRACT	If Certified or self-reporting MBE/WBE/ESB Subcontractor		
			Check box <input checked="" type="checkbox"/>	MBE	WBE
Name <u>Northwest Hydromuclears</u> Address <u>37621 SE Bear Creek Ln</u> City/St/Zip <u>Boring OR</u> Phone# <u>503-668-5531</u> OCCB# <u>97009</u> <u>#6195</u>	<u>Hydroseed</u>	<u>\$3383.00</u> <u>\$1,626,773.00</u> (P)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Name Address City/St/Zip Phone# OCCB#			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name Address City/St/Zip Phone# OCCB#			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Name Address City/St/Zip Phone# OCCB#			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**CLACKAMAS COUNTY
GOOD FAITH EFFORT
M/W/ESB CONTACT / BIDS RECEIVED LOG
(FORM 2)**

Prime Contractor: *Paul Brothers Inc*
Project: #2021-18 Tri-City Water Resource Recovery Facility (WRRF) Mitigation Planting

Prime Contractor must contact or endeavor to contact at least 3 M/W/ESB Subcontractors for each Division of Work. Prime Contractor shall record its contacts with M/W/ESB Subcontractors through use of this log (or equivalent) entering all required information. All columns shall be completed where applicable. Additional forms may be copied if needed.

NAME OF M/W/ESB SUBCONTRACTOR	Divisions of Work (Painting, electrical, landscaping, etc.)	Date Solicitation Letter / Fax Sent	PHONE CONTACT		BID ACTIVITY Check Yes or No			REJECTED BIDS (if bid received & not used)		Notes
			Date of Call	Person Receiving Call	Will Bid	Bid Received	Bid Used	Bid Amount	Reason Not Used (Price, Scope or Other. If Other, explain in Notes>>)	
<i>M/W Hydromulch</i>	<i>Hydroseed</i>	<i>4/15/21</i>	<i>4/18</i>	<i>Sam Cook</i>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<i>\$3383.00</i>		
					<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No			

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM
PROJECT: #2021-18 Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting

BID OPENING: April 22, 2021, 2:00 PM, Pacific Time

Failure to submit this Form by the disclosure deadline will result in a nonresponsive bid.

INSTRUCTIONS:

This First-Tier Subcontractor Disclosure Form ("Form") must be submitted and received at the location specified in the Notice of Public Improvement Contract Opportunity on the advertised Bid Closing, and within two working hours after the advertised Bid Closing Time.

The Form may be mailed, hand-delivered or emailed to: Procurement@clackamas.us. It is the responsibility of Bidders to submit this Form and any additional sheets with the Project name clearly marked on the envelope or the subject line of the email.

Subcontractor lists may be submitted with the bid in the same envelope or email at the Bid Closing date and time. Subcontractor lists **MUST** be submitted within **two (2) hours** of the Bid Closing date and time.

List below the name of each subcontractor that will be furnishing labor, or labor and materials, for which disclosure is required, the category of work that the subcontractor will be performing, and the dollar value of the subcontract. Enter **"NONE"** if the value of the project bid is less than \$100,000 or there are no subcontractors that need to be disclosed. ATTACH ADDITIONAL SHEETS IF NECESSARY.

	SUBCONTRACTOR NAME	DOLLAR VALUE	CATEGORY OF WORK
1.	NW Hydromulchers	\$ 3383.00	Seeding
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

The above listed first-tier subcontractor(s) are providing labor, or labor and material, with a Dollar Value equal to or greater than:

- a) 5% of the total Contract Price, but at least \$15,000. If the Dollar Value is less than \$15,000 do not list the subcontractor above; or
- b) \$350,000 regardless of the percentage of the total Contract Price.

Firm Name: Paul Brothers Inc

Bidder Signature: [Signature] Phone # 503 663-1220



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT

BID FORM

PROJECT: #2021-18 Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting
BID CLOSING: April 22, 2021, 2:00 PM, Pacific Time
BID OPENING: April 22, 2021, 2:05 PM, Pacific Time

FROM: Paul Brothers Inc
Bidder's Name (must be full legal name, not ABN/DBA)

TO: Clackamas County
Procurement Division procurement@clackamas.us

1. Bidder is (check one of the following and insert information requested):

- a. An individual; or
- b. A partnership registered under the laws of the State of _____; or
- c. A corporation organized under the laws of the State of Oregon; or
- d. A limited liability corporation organized under the laws of the State of _____;

and authorized to do business in the State of Oregon hereby proposes to furnish all material and labor and perform all work hereinafter indicated for the above project in strict accordance with the Contract Documents for the Basic Bid as follows:

One hundred sixty two thousand Dollars (\$ 162,677.00)
Six hundred seventy seven + 900
and the Undersigned agrees to be bound by the following documents:

- Notice of Public Improvement Contract Opportunity
 - Instructions to Bidders
 - Bid Bond
 - Public Improvement Contract Form
 - Clackamas County General Conditions
 - Prevailing Wage Rates
 - Plans, Specifications and Drawings
 - Supplemental Instructions to Bidders
 - Bid Form
 - Performance Bond and Payment Bond
 - Supplemental General Conditions
 - Payroll and Certified Statement Form
- ADDENDA numbered 6 through _____, inclusive (fill in blanks)

2. The Undersigned proposes to add to or deduct from the Base Bid indicated above the items of work relating to the following Alternate(s) as designated in the Specifications: N/A

3. BASIS OF BIDS

3.1 Unit of Measurement and Payment for all items required for Native Planting Area Maintenance shall be based on the Lump Sum or unit prices as set forth in the Contractor's Proposal.

3.2 Unit Price Bid Schedule

3.3 The pay items will be as follows:

	Description	Unit	Item \$
3.3.1	North Planting Area	Lump Sum	115,419.
3.3.2	West Planting Area	Lump Sum	15,917.
	Three Year Maintenance (Lump sum that covers all three years, not a per year value)		
3.3.3	General Inspection and Reporting	Lump Sum	9247.
3.3.4	Temp Irrigation Inspection and Maintenance	Lump Sum	11,047.
3.3.5	Native Plating Area Maintenance	Lump Sum	11,047.
	Basic Bid Total		162,677.00

3.4 Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all unit price bid items will be based on the actual quantities, determined as provided in the Contract Documents

3.5 The bid item has associated incidental work. Work not listed on bid schedule, but necessary for completion of work specified herein shall be considered incidental and shall not relieve Contractor from the responsibility of completing incidental work.

4. The work shall be completed within the time stipulated and specified in the contract documents.

5. Accompanying herewith is Bid Security which is equal to ten percent (10%) of the total amount of the Basic Bid, plus the total sum of all Alternatives (if any).

6. The Undersigned agrees, if awarded the Contract, to execute and deliver to Clackamas County, within twenty (20) calendar days after receiving the Contract forms, a Contract Form, and a satisfactory Performance Bond and Payment Bond each in an amount equal to one hundred percent (100%) of the Contract sum, using forms provided by the Owner. The surety requested to issue the Performance Bond and Payment Bond will be:

Travelers Surety of America
(name of surety company - not insurance agency)

The Undersigned hereby authorizes said surety company to disclose any information to the Owner concerning the Undersigned's ability to supply a Performance Bond and Payment Bond each in the amount of the Contract.

7. The Undersigned further agrees that the Bid Security accompanying the Bid is left in escrow with Clackamas County; that the amount thereof is the measure of liquidated damages which the Owner will sustain by the failure of the Undersigned to execute and deliver the above-named Contract Form, Performance Bond and Payment Bond, each as published, and that if the Undersigned defaults in either executing the Contract Form or providing the Performance Bond and Payment Bond within twenty (20) calendar days after receiving the Contract forms, then the Bid Security shall become the property of the Owner at the Owner's option; but if the Bid is not accepted within thirty (30) calendar days of the time set for the opening of the Bids, or if the Undersigned executes and timely delivers said Contract Form, Performance Bond and Payment Bond, the Bid Security shall be returned.

8. The Undersigned certifies that: (i) This Bid has been arrived at independently and is being submitted without collusion with and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment or services described in the invitation to bid designed to limit independent bidding or competition; and (ii) the contents of the Bid have not been communicated by the Undersigned or its employees or agents to any person not an employee or agent of the Undersigned or its surety on any Bond furnished with the Bid and will not be communicated to such person prior to the official opening of the Bid.

9. The undersigned HAS, HAS NOT (check one) paid unemployment or income taxes in Oregon within the past 12 months and DOES, DOES NOT (check one) a business address in Oregon. The undersigned acknowledges that, if the selected bidder, that the undersigned will have to pay all applicable taxes and register to do business in the State of Oregon before executing the Contract Form.

10. The Undersigned agrees, if awarded a contract, to comply with the provisions of ORS 279C.800 through 279C.870 pertaining to the payment of the prevailing rates of wage.

11. Contractor's CCB registration number is 64461. As a condition to submitting a bid, a Contractor must be registered with the Oregon Construction Contractors Board in accordance with ORS 701.035 to 701.055, and disclose the registration number. Failure to register and disclose the number will make the bid unresponsive and it will be rejected, unless contrary to federal law.

12. The successful Bidder hereby certifies that all subcontractors who will perform construction work as described in ORS 701.005(2) were registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time the subcontractor(s) made a bid to work under the contract.

13. The successful Bidder hereby certifies that, in compliance with the Worker's Compensation Law of the State of Oregon, its Worker's Compensation Insurance provider is SAIF, Policy No. 774651, and that Contractor shall submit Certificates of Insurance as required.

14. Contractor's Key Individuals for this project (supply information as applicable):

Project Executive: Regis Paul, Cell Phone: 503 209 2390,
Project Manager: Dave Kulkken, Cell Phone: 503 867 4543,
Job Superintendent: Bill Kitchens, Cell Phone: 503 209 1089,
Project Engineer: Joe Paul, Cell Phone: 503 867-4543.

15. The Undersigned certifies that it has not discriminated against minority, women, or emerging small businesses in obtaining any subcontracts for this project.

16. The Undersigned certifies that it has a drug testing program in accordance with ORS 279C.505.

REMINDER: Bidder must submit the below First-Tier Subcontractor Disclosure Form.

By signature below, Contractor agrees to be bound by this Bid.

NAME OF FIRM Paul Brothers Inc
ADDRESS 9601 SE Rowan Rd
Boring OR 97009
TELEPHONE NO 503 663 1220
EMAIL ppaul@paulbrothersinc.com
SIGNATURE 1) _____
Sole Individual
or 2) _____
Partner
or 3) Regis Paul
Authorized Officer or Employee of Corporation

***** END OF BID *****



WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT CONTRACT

PERFORMANCE BOND

Bond No.: 107432880
Solicitation: #2021-18
Project Name: Tri-City Water Resource Recovery Facility ("WRRF") Mitigation Planting Project

Table with 2 columns: Surety information and Bond Amount. Includes entries for Surety #1 (\$162,677.00), Surety #2 (N/A), and Total Penal Sum of Bond (\$162,677.00).

We, Paul Brothers, Inc. as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto Water Environment Services ("District"), the sum of (Total Penal Sum of Bond) \$One Hundred Sixty-Two Thousand, Six Hundred* (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety); and *Seventy-Seven & 00/100ths Dollars (\$162,677.00)

WHEREAS, the Principal has entered into a contract with the District, along with the plans, specifications, terms and conditions of which are contained in the above-referenced Project Contract Documents; and

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall defend, indemnify, and save harmless the District and Clackamas County and their elected officials, officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect for so long as any term of the Contract remains in effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the District, be obligated for the payment of any premiums.

This bond is given and received under authority of Oregon Revised Statutes Chapter 279C and the Clackamas County Local Contractor Review Board Rules, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this 17th day of May, 2021.

PRINCIPAL: Paul Brothers, Inc.

By: [Signature]
Signature

President
Official Capacity

Attest: [Signature]
Corporation Secretary

SURETY: Travelers Casualty and Surety Company of America
[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:
[Power-of-Attorney must accompany each bond]

Nicholas A Fredrickson
Name

[Signature]
Signature

2233 112th Avenue NE
Address

Bellevue WA 98004

City State Zip

(425) 709-3600 (425) 709-7460

Phone Fax



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Nicholas A Fredrickson** of **BELLEVUE Washington**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law. **IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January**, 2019.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **17th** day of **January**, 2019, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 17th day of May, 2021




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.**



WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT CONTRACT

PAYMENT BOND

Bond No.: 107432880

Solicitation: #2021-18

Project Name: Tri-City Water Resource Recovery Facility (“WRRF”) Mitigation Planting Project

Travelers Casualty and

Surety Company of America (Surety #1)

Bond Amount No. 1: \$ 162,677.00

N/A (Surety #2)*

Bond Amount No. 2:* \$ N/A

* If using multiple sureties

Total Penal Sum of Bond: \$ 162,677.00

We, Paul Brothers, Inc., as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto Water Environment Services (“District”), the sum of (Total Penal Sum of Bond) One Hundred Sixty-Two Thousand, Six Hundred Seventy-Seven & 00/100ths Dollars (\$162,677.00) (Provided, that we the Sureties bind ourselves in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety); and

WHEREAS, the Principal has entered into a contract with the District, along with the plans, specifications, terms and conditions of which are contained in above-referenced Project Contract Documents; and

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called “Contract”); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall defend, indemnify, and save harmless the District and Clackamas County and their elected officials, officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the District on account of any labor or materials furnished; and shall do all things required of

the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect for so long as any term of the Contract remains in effect.
Nonpayment of the bond premium will not invalidate this bond nor shall the District be obligated for the payment of any premiums.

This bond is given and received under authority of Oregon Revised Statutes Chapter 279C and the Clackamas County Local Contractor Review Board Rules, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this 17th day of May, 2021.

PRINCIPAL: Paul Brothers, Inc.

By: [Signature]
Signature

[Signature]
Official Capacity
Attest: [Signature]
Corporation Secretary

SURETY: Travelers Casualty and Surety Company of America
[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:
[Power-of-Attorney must accompany each bond]

Nicholas A Fredrickson
Name

[Signature]
Signature

2233 112th Avenue NE
Address

Bellevue WA 98004
City State Zip

(425) 709-3600 (425) 709-7460
Phone Fax



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

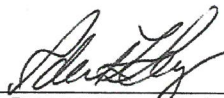
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Nicholas A Fredrickson** of **BELLEVUE Washington**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January**, 2019.



State of Connecticut

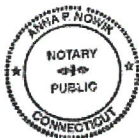
City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **17th** day of **January**, 2019, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 17th day of May, 2021




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.**



CLACKAMAS COUNTY GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS January 1, 2020

INSTRUCTIONS: The attached **Clackamas County General Conditions for Public Improvement Contracts ("County General Conditions")** apply to all designated Public Improvement contracts. Changes to the County General Conditions (including any additions, deletions or substitutions) should only be made by attaching Public Improvement Supplemental General Conditions. The text of these County General Conditions should not otherwise be altered.

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**CLACKAMAS COUNTY GENERAL CONDITIONS
FOR PUBLIC IMPROVEMENT CONTRACTS
("County General Conditions")**

**SECTION A
GENERAL PROVISIONS**

A.1 DEFINITION OF TERMS

In the Contract Documents the following terms shall be as defined below:

APPLICABLE LAWS, means all federal, state and local laws, codes, rules, regulations and ordinances, as amended applicable to the Work, to the Contract, or to the parties individually.

APPROVED BY CONTRACTING AGENCY, for purposes of ORS 279C.570(2), means the date a progress payment is approved by the Clackamas County Treasurer's office.

ARCHITECT/ENGINEER, means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

AVOIDABLE DELAYS, mean any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that: (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors; (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time; (c) Do not impact activities on the accepted critical path schedule; and (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

BIDDER, means a bidder in connection with Instructions to Bidders or a proposer in connection with a Request for Proposals, or Solicitation Document. May also be referenced as "Offeror," "Quoter" or "Proposer" based on the type of Solicitation Document.

CHANGE ORDER, means a written order which, when fully executed by the Parties to the Contract, constitutes a change to the Contract Documents. Change Orders shall be issued in accordance with the changes provisions in Section D and, if applicable, establish a Contract Price or Contract Time adjustment. A Change Order shall not be effective until executed by both parties.

CLAIM, means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these County General Conditions.

CONTRACT, means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS, means the Contract, County General Conditions, Supplemental General Conditions if any, Plans, Specifications, the accepted Offer, Solicitation Document and addenda thereto, Instructions to Offerors, and Supplemental Instructions to Offerors.

CONTRACT PERIOD, as set forth in the Contract Documents, means the total period of time beginning with the full execution of a Contract

and, if applicable, the issuance of a Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE, means the total price reflected in the Contract.

CONTRACT TIME, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the Project schedule.

CONTRACTOR, means the Person awarded the Contract for the Work contemplated.

DAYS, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

DEFECTIVE WORK, means Work that is not completed in accordance with the Specifications or the requirements of the Contract.

DIRECT COSTS, means, unless otherwise provided in the Contract Documents: the cost of materials, including sales tax and the cost of delivery; cost of labor which shall only include the applicable prevailing wage and fringe benefit (if applicable, and if paid to or on behalf of the employee) rate plus a maximum of a twelve percent (12%) markup on the prevailing wage (but not the fringe benefit) to cover Contractor's labor burden including but not limited to social security, Medicare, unemployment insurance, workers' compensation insurance, sick leave pay; substantiated Project cost increases for specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater) or bond premiums; rental cost of equipment, and machinery required for execution of the Work; and the additional costs of field personnel directly attributable to the Work; travel expense reimbursement only if specifically authorized and only to the extent allowable under the County Contractor Travel Reimbursement Policy, hereby incorporated by reference.

FINAL COMPLETION, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any.

FORCE MAJEURE, means an act, event or occurrence caused by fire, riot, war, acts of God, terrorism, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to the Contract who is asserting Force Majeure.

NOTICE TO PROCEED, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents.

OFFER, means a bid in connection with Instructions to Bidders or a proposal in connection with a Request for Proposals, or Solicitation Document to do the work stated in the Solicitation Document at the price quoted. May also be referenced as "Bid," "Quote," or "Proposal" based on the type of Solicitation Document.

OVERHEAD, means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), labor rates and fringe benefits above the applicable prevailing wage and fringe benefit (if applicable, and if paid to or on behalf of the employee), Contractor's labor burden for fringe benefit if paid to the employee, expenses of Contractor's offices and supplies at the Project Site (e.g. job trailer) and at Contractor's principal place of business and including expenses of personnel staffing the Project Site office and Contractor's principal place of business, and Commercial General Liability Insurance and Automobile Liability Insurance.

OWNER, means, Clackamas County or any component unit thereof including Clackamas County Development Agency, Clackamas County Service District No. 1, Surface Water Management Agency of Clackamas County, Tri-City Service District, Water Environment Services, North Clackamas Parks and Recreation District, Clackamas County Extension & 4-H Service District, Library Service District of Clackamas County, Enhanced Law Enforcement District, and Clackamas County Service District No. 5. Owner may elect, by written notice to Contractor, to delegate certain duties to more than one agent, including without limitation, to an Architect/Engineer. However, nothing in these County General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

PERSON, means a natural person or entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, a nonprofit, a trust, or any other entity possessing the legal capacity to contract.

PLANS, means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

PRODUCT DATA, means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

PROJECT, means the total undertaking to be accomplished for Owner by architects/engineers, contractors, and other others, including planning, study, design, construction, testing, commissioning, start-up, of which the Work to be performed under the Contract Documents is a part.

PROJECT SITE, means the specific real property on which the Work is to be performed, including designated contiguous staging areas, that is identified in the Plans, Specifications and Drawings.

PUNCH LIST, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer of ownership to Owner, operational and maintenance manuals, shop drawings, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these County General Conditions, recording all Services performed.

SAMPLES, means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

SHOP DRAWINGS, means drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any subsubcontractor), manufacturer, supplier, or distributor to illustrate some portion of the Work.

SOLICITATION DOCUMENT, means an Invitation to Bid, Request for Proposals, Request for Quotes, or other written document issued by Owner that outlines the required Specifications necessary to submit an Offer.

SPECIFICATION, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item included in the Solicitation Document. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the

Work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR, means a Person having a direct contract with the Contractor, or another Subcontractor of any tier, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION, means the date when the Owner accepts in writing the construction, alteration or repair constituting the Work or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.3.2.

SUBSTITUTIONS, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Substitutions also means the performance of the Work by a labor force other than what is submitted in the Offer.

SUPPLEMENTAL GENERAL CONDITIONS, means those conditions that remove from, add to, or modify these County General Conditions. Public Improvement Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

UNAVOIDABLE DELAYS, mean delays other than Avoidable Delays that are: (a) to the extent caused by any actions of the Owner, or any other employee or agent of the Owner, or by a separate contractor employed by the Owner; (b) to the extent caused by any Project Site conditions which differ materially from the conditions that would normally be expected to exist and inherent to the construction activities defined in the Contract Documents; or (c) to the extent caused by Force Majeure acts, or events or occurrences.

WORK, means the furnishing of all materials, equipment, labor, transportation, services, incidentals, those permits and regulatory approvals not provided by the owner necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents for the Project.

A.2 SCOPE OF WORK

The Work contemplated under the Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all work in connection with the Project described in the Contract Documents. The Contractor shall perform all Work necessary so that the Project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- (a) The Contract and any amendments thereto, including Change Orders, with those of later date having precedence over those of an earlier date;
- (b) The Supplemental General Conditions;
- (c) County General Conditions;
- (d) Plans and Specifications;
- (e) The Solicitation Document, and any addenda thereto.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation in writing as determined in Owners sole discretion.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner. Matters concerning and interpretation of requirements of the Contract Documents will be decided by the Owner in the Owner's sole discretion, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Contractor shall not proceed without direction in writing from the Owner (or Architect/Engineer).

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the Project Site is located on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND PROJECT SITE

A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained. Contractor shall at all times be responsible for all utility locates regardless of the ownership of such utility infrastructure or service.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner, including without limitation, any nonconformity with Applicable Laws.

A.4.4 If the Contractor believes that adjustments to cost or Contract Time are involved because of clarifications or instructions issued by the Owner (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner denies Contractor's request for additional compensation, additional Contract Time, or other relief

that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

A.4.5 If the Contractor believes that adjustments to cost or Contract Time are involved because of an Unavoidable Delay caused by differing Project Site conditions, the Contractor shall notify the Owner immediately of differing Project Site conditions before the area has been disturbed. The Owner will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner agrees that a differing Project Site condition exists, any adjustment to compensation or Contract Time will be determined based on the process set forth in Section D.2.2 for adjustments to or deletions from Work. If the Owner disagrees that a differing Project Site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under the Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner as those terms are used in ORS 30.265.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under the Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

B.1.1 The Owner shall administer the Contract as described in the Contract Documents throughout the term of the Contract, including the one-year period for correction of Work. The Owner will act as provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner may rely on the Architect/Engineer or other agents to perform some or all of these tasks.

B.1.2 The Owner may visit the Project Site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner will not

make exhaustive or continuous on-Project Site inspections to check the quality or quantity of the Work. Unless otherwise required in a Change Order, the Owner will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall communicate with each other within a reasonable time frame about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

B.2 CONTRACTOR'S MEANS AND METHODS; MITIGATION OF IMPACTS

B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the Project Site safety thereof and, except as stated below, shall be fully and solely responsible for the Project Site safety of such means, methods, techniques, sequences or procedures.

B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the Project, including those caused by authorized changes, which may affect cost, schedule, or quality.

B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, agents, and Subcontractors on the Project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

B.3 MATERIALS AND WORKMANSHIP

B.3.1 The intent of the Contract Documents is to provide for the construction and completion of every detail of the Work described. All Work shall be performed in a professional manner and, unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's sole expense and within a reasonable time frame.

B.3.3 Work done and materials furnished may be subject to inspection and/or observation and testing by the Owner to determine if they conform to the Contract Documents. Inspection of the Work by the Owner does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.

B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner and include the cost of the Samples in the Contract Price.

B.4 PERMITS

Contractor shall obtain and pay for all necessary permits, licenses and fees, except for those specifically excluded in the Supplemental General Conditions, as required for the project. Contractor shall be responsible for all violations of the law. Contractor shall give all requisite notices to public authorities.

B.5 COMPLIANCE WITH GOVERNMENT REGULATIONS

B.5.1 Contractor shall comply with Applicable Laws, as amended pertaining to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following, as applicable and as may be amended from time to time: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended; (vi) all regulations and administrative rules established pursuant to any applicable laws; and (vii) all other applicable requirements of federal, state, county or other local government entity statutes, rules and regulations.

B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and

(a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.

(b) Contractor shall maintain, in current and valid form, all licenses and certificates required by Applicable Laws or the Contract when performing the Work.

B.5.3 Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 at the time they submit their bids to the Contractor.

B.5.4 Contractor shall certify that each landscape contracting business, as defined in ORS 671.520(2), performing Work under the Contract holds a valid landscape construction professional license issued pursuant to ORS 671.560.

B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (877) 668-4001.

B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a material breach of Contract and constitute

grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

B.5.7 The Contractor shall include in each subcontract those provisions required under ORS 279C.580.

B.5.8 Contractor shall comply with ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

B.6 SUPERINTENDENCE

Contractor shall keep on the Project Site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the Project Site. Directions given to the superintendent by the Owner shall be confirmed in writing to the Contractor.

B.7 INSPECTION

B.7.1 Owner shall have access to the Work at all times.

B.7.2 Inspection of the Work will be made by the Owner at its discretion. The Owner will have authority to reject Work that does not conform to the Contract Documents in the Owner's sole discretion. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner, shall be removed and replaced at the Contractor's expense.

B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by Applicable Laws or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner.

B.7.4 As required by the Contract Documents, Work done or material used without required inspection or testing and/or without providing timely notice to the Owner may be ordered removed at the Contractor's expense.

B.7.5 If directed to do so by Owner or other permitting authority any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without required testing or inspection or sufficient notice to the Owner, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner, the uncovering and restoration will be paid for pursuant to a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.

B.7.7 In Owner's sole discretion, it may authorize other interested parties to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner.

B.8 SUBCONTRACTS AND ASSIGNMENT

B.8.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions and Supplemental General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.8.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.8.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under the Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of the Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.9 OWNER'S RIGHT TO DO WORK

Owner reserves the right to perform other or additional work at or near the Project Site with other agents than those of the Contractor. If such work takes place within or next to the Project Site, Contractor shall coordinate work with the other contractors or agents, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all agents involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner will establish work priority (including the Work) in the Owner's sole discretion.

B.10 OTHER CONTRACTS

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of the Contract. The Contractor of the Contract shall fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in Section B.13.

B.11 ALLOWANCES

B.11.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances

shall be supplied for such amounts and by such persons or entities as the Owner may direct.

- B.11.2 Unless otherwise provided in the Contract Documents:
- (a) when finally reconciled, allowances shall cover the cost of the Contractor's materials and equipment delivered at the Project Site and all required taxes, less applicable trade discounts;
 - (b) Contractor's costs for unloading and handling at the Project Site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
 - (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (ii) changes in Contractor's costs under Section B.17.2(b);
 - (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

B.12 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- B.12.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples.
- B.12.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.
- B.12.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents

and approved by the Contractor may be returned by the Architect/Engineer without action.

- B.12.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- B.12.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.
- B.12.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.
- B.12.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the Project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner.

B.13 SUBSTITUTIONS

The Contractor may make Substitutions only with the written consent of the Owner, after evaluation by the Owner and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the Solicitation Document. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under the Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.14 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under the Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of the Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

SECTION C
WAGES AND LABOR

C.1 PREVAILING WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Pursuant to ORS 279C.830(1)(d), Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts. If the Work is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Contractor shall pay the higher of the applicable state or federal prevailing rate of wage. Contractor shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS

- C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner on the form prescribed by the Commissioner of the Bureau of Labor and Industries ("BOLI"), certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the Project and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement, and, that to the Contractor's or Subcontractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth (5th) business day of the following month. The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.
- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on the Project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this Project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.
- C.2.4 In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

- C.3.1 As a condition to Owner's performance hereunder, the Contractor shall:
- C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in the Contract.
- C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund or successor program from such Contractor or Subcontractor incurred in the performance of the Contract.
- C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
- C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C.3.2 If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with the Project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under the Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
- C.3.3 Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the Contractor by the Owner under such contract.
- C.3.4 If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C.3.5 If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- C.3.6 All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.
- C.3.7 In accordance with ORS 279C.570, for all subcontracts that exceed \$500,000 that the Contractor withholds retainage, the Contractor shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the

date the payment request is approved until the date the retainage is paid to the Subcontractor to which it is due.

C.4 PAYMENT FOR MEDICAL CARE

As a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums of which the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

C.5 HOURS OF LABOR

As a condition to Owner's performance hereunder, no person shall be employed to perform Work under the Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This Section C.5 will not apply to Contractor's Work under the Contract to the extent Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under the Contract.

**SECTION D
CHANGES IN THE WORK**

D.1 CHANGES IN WORK

D.1.1 The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written agreement and then only after any necessary approvals have been obtained. A Change Order is required to modify the Contract, which shall not be effective until its execution by the parties to the Contract and all approvals required by public contracting laws have been obtained.

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction may be necessary or desirable during the course of construction. Within the general scope of the Contract, the Owner may at any time, without notice to the sureties and without impairing the Contract, require changes it deems necessary or desirable within the scope of this Project and consistent with this Section D.1. All changes to the Work shall be documented and Change Orders shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.
- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the Project.

- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of Section B.13 (Owner's Right to Do Work) shall then apply. Adjustments in compensation shall be made under Section D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that adjustments to or deletions from the Work shall be administered and compensated according to the following:

- (a) **Unit Pricing:** Unit pricing may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for adjustments to Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the adjustment to Work.
- (b) **Fixed Fee:** If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for adjustments to or deletions from the Work. In fixed pricing, the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. Notwithstanding the foregoing, the mark-ups set forth in Section D.1.3(c) shall be utilized in establishing fixed pricing, and such mark-ups shall not be exceeded. Cost and price data relating to adjustments to or deletions from the Work shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) **Time and Material:** In the event that unit pricing and fixed pricing are not utilized, then adjustments to or deletions from the Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. The Contractor or Subcontractor who performs the Work shall be allowed to add up to ten percent (10%) markup to the Direct Costs as full compensation for profit, Overhead and other indirect costs for Work performed with the Contractor's or Subcontractor's own agents

Each ascending tier Subcontractor or the Contractor that did not perform the Work, will be allowed to add up to five percent (5%) supplemental markup on the Direct Costs of the Work (but not the above allowable markups) covered by a Change Order. No additional markup shall be permitted for any third tier or greater descending Subcontractor.

Example: \$20,000 of Direct Costs Work performed by a 2nd Tier Subcontractor

	Markup	Allowed Total Fee Plus Markup
General Contractor	5%	\$1,000.00
1 st Tier Sub Contractor	5%	\$1,000.00
2 nd Tier Sub Contractor	10%	\$22,000.00

- (d) Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other agents furnished by the Contractor, including Subcontractors, for adjustments to or deletions from the Work pursuant to a Change Order. Owner may establish a maximum cost for additional Work under this Section D.1.3, which shall not be exceeded for reimbursement without additional written

authorization from Owner in the form of a Change Order. Contractor shall not be required to complete such additional Work without additional authorization.

- D.1.4 Any necessary adjustment of Contract Time that may be required as a result of adjustments to or deletions from the Work must be agreed upon by the parties before the start of the revised Work unless Owner authorizes Contractor to start the revised Work before agreement on Contract Time adjustment.

Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of Owner's request for additional Work. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Contractor's requests pertaining to that additional Work shall be barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

- D.1.5 If any adjustment to Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of any other part of the Work under the Contract, Contractor shall submit a written request to the Owner, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of Owner's request for adjustments to or deletions from the Work by Contractor.

The thirty (30) Day time limit applies to claims of Subcontractors, suppliers, or manufacturers who may be affected by Owner's request for adjustments to or deletions from the Work and who request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) Day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the adjustments to compensation and Contract Time requested. The Contractor shall analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for adjustments to compensation or Contract Time that Contractor submits to the Owner. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to the Contract. The consideration of such requests and claims under this section does not give any Person, not a party to the Contract the right to bring a claim against Owner, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner denies the Contractor's request for adjustment to compensation or Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- D.1.6 No request or Claim by the Contractor for additional costs or an adjustment of Contract Time shall be allowed if made after receipt of final payment application under the Contract. Final payment application must be made by Contractor within the time required under Section E.6.4.

- D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor agrees that it will work in good faith with Owner to undertake changes, when agreed upon by execution of a Change Order. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

- D.2.1 Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

- D.2.2 In the event of Unavoidable Delays, Contractor may be entitled to the following:

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).
- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.2 for Unavoidable Delays, other than requests for differing Project Site conditions for which a review process is established under Section A.4.5, Contractor shall submit a written notification of the delay to the Owner within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the Project components impacted by the delay, and the anticipated additional Contract Time extension or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2, Contractor's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

- D.3.1 All Contractor Claims shall be referred to the Owner for review. Contractor's Claims, including Claims for adjustments to compensation or Contract Time, shall be submitted in writing by Contractor to the Owner within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these County General Conditions. Within thirty (30) Days after the initial Claim, Owner shall receive from Contractor a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be barred.

SECTION E
PAYMENTS

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include all information, records and documentation necessary for the Owner to properly and completely evaluate the claim, including, but not limited to a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time adjustment requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner. The Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to the Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

D.3.3 The Owner, through the Architect/Engineer (or other employee or agent assigned by the Owner) will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) recommend approval of all or part of the Claim; (5) arrange a meeting with the Contractor for formal review of the Claim; or (6) propose an alternate resolution.

D.3.4 Once the Engineer or Project Manager determines the Owner is in receipt of a properly submitted claim, the Engineer or Project Manager may arrange a meeting, as agreed by the parties, with the Contractor in order to present the claim for formal review and discussion. A person authorized by the Contractor to execute Change Orders on behalf of the Contractor must be present and attend all claim meetings.

D.3.5 The Owner's decision, through the Architect/Engineer (or other employee or agent assigned by the Owner), shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner, through the appropriate department director, shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

D.3.6 If, at any step in the claim decision or review process, the Contractor fails to promptly submit requested information or documentation that the Owner deems necessary to analyze the claim, the Contractor is deemed to have waived its right to further review, and the Claim will not be considered properly filed and preserved.

D.3.7 Both parties agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the issuance of the appeal in Section D. 3.4 above. If the parties are unable to resolve their issues through mediation or otherwise, either party may seek redress through all available remedies in equity or in law.

D.3.8 Unless otherwise directed by Owner, Contractor shall proceed with the Work while any Claim, or mediation or litigation arising from a Claim, is pending. Regardless of the review period or the final decision of the Owner, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease or delay Work, in whole or in part, without a written stop work order from the Owner.

E.1 SCHEDULE OF VALUES

The Contractor shall submit, by or before the pre-construction conference (as described in Section H.1.3), a schedule of values ("Schedule of Values") for the Contract Work. This schedule shall provide a breakdown of values for the Contract Work and will be the basis for progress payments. The breakdown shall demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner, Contractor shall revise the schedule of values and resubmit the same for approval of Owner.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses, in accordance with the requirements of this Section E.2 and ORS 279C.570. Applications for payment shall be based upon estimates of Work completed and the Schedule of Values. As a condition precedent to Owner's obligation to pay, all applications for payment shall be approved by the Owner. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest in accordance with ORS 279C.570 for overdue invoices, not including retainage, due the Contractor. Overdue invoices will be those that have not been paid within the earlier of:

- (a) Thirty (30) days after receipt of the invoice; or
- (b) Fifteen (15) days after the payment is approved by the County.

Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Payment of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for such amounts which are correct and proper.

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers ("EFT") through Automated Clearing House ("ACH") payments. If Owner makes this election, the Contractor shall arrange for receipt of the EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor including payments to Subcontractors. Contractor shall include in its application for payment a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: _____
Dated: _____"

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials and equipment only. The submitted amount in the application for payment shall be reduced by the cost of transportation from the storage site to the Project Site and for the cost of an inspector to verify delivery and condition of the goods at the storage site. The cost of storage and inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material and/or equipment stored and of payment for the storage site.
- (g) Payment for stored materials and/or equipment shall in no way indicate acceptance of the materials and/or equipment or waive any rights under the Contract for the rejection of the Work or materials and/or equipment not in conformance with the Contract Documents.
- (h) All required documentation shall be submitted with the respective application for payment.

E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with Applicable Laws or the Contract Documents;
- (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Contractor and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2);

- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) damage to the Work, Owner or Owner's agent;
- (f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) failure to carry out the Work in accordance with the Contract Documents; or
- (h) assessment of liquidated damages, when withholding is made for offset purposes.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in applications for payment until the Contract Price has been adjusted by a Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the Project Site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner has withheld or nullified payment as provided in the Contract Documents.

E.2.6 Contractor's applications for payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided financing, labor, materials and equipment relating to the Work.

E.2.8 If Contractor disputes any determination by Owner with regard to any application for payment, Contractor nevertheless shall continue to expeditiously perform the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Owner's receipt of payroll certification pursuant to Section C.2 of the Contract shall be a condition precedent to Owner's obligation to pay any progress payments or final payment otherwise due.

E.4 DUAL PAYMENT SOURCES

Contractor shall not be compensated for Work performed under the Contract from any state agency other than the agency that is a party to the Contract.

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with the requirements set forth in Local Contract Review Board Rules or the applicable County standard.

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of retainage on or may eliminate retainage on any remaining monthly Contract payments after fifty (50) percent of the Work under the Contract is completed if, in the Owner's discretion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is ninety-seven and a half percent (97.5%) completed in Owner's estimation, the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to hundred (100) percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 If retainage is withheld, unless the Contractor requests and the Owner accepts a form of retainage described in options (a) or (b) below, the Owner (except as otherwise provided below for a contract of \$500,000 or less), will deposit the retainage in an interest-bearing escrow account as required by ORS 279C.570(2). The Contractor shall execute such documentation and instructions respecting the interest-bearing escrow account as the Owner may require to protect its interests, including but not limited to a provision that no funds may be paid from the account to anyone without the Owner's advance written authorization. For a Contract over \$500,000, if the Contractor requests that the Owner deposit the retainage in an interest-bearing account under ORS 279C.560(5), the Owner will use an interest-bearing escrow account as stated above. For a Contract of \$500,000 or less, if the Contractor requests that the Owner deposit the retainage in an interest-bearing account under ORS 279C.560(5), the Owner will use an interest-bearing account (in a bank, savings bank, trust company or savings association) as provided under ORS 279C.450(5).

In accordance with the provisions of ORS 279C.560, Local Contract Review Board Rules, or the applicable County standard, unless the Owner finds in writing that accepting bonds, securities or other instruments described in option (a) below or a security bond described in option (b) below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

- a. to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible, the bonds, securities and other instruments must be of a character approved by Owner; or

- b. that the Contractor be allowed, with the approval of the Owner, Owner allow Contractor to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

When the Owner has accepted the Contractor's election of option (a) or (b), Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request for option (b), Contractor shall accept like bonds from Subcontractors and suppliers on the Project from which Contractor has required retainages.

E. 5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of two thirds of one percent per month on the final payment due Contractor, interest to commence forty-five (45) Days after the date which Owner receives Contractor's final approved application for payment and Work under the Contract has been completed and accepted and to run until the date when final payment is tendered to Contractor. The Contractor shall notify Owner in writing when the Contractor considers the Work complete and deliver to Owner its final application for payment and Owner shall, within fifteen (15) Days after receiving the written notice and the application for payment, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run forty-five (45) Days after the end of the fifteen (15) Day period.

E.5.1.4 Owner will reduce the amount of the retainage if the Contractor notifies the Owner that the Contractor has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner, bonds and securities of equal value of a kind approved by the Owner and such bonds and securities have in fact been deposited.

E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor.

E.5.1.6 The Contractor shall comply with all applicable legal requirements for withholding and releasing retainage and for prompt payments, including but not limited to those in ORS Chapters 279C and 701, and 49 CFR 26.29.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under the Contract, the Contractor shall notify the Owner, in writing, that Contractor has completed Contractor's obligations under the Contract and shall prepare its application requesting final payment. The amount of final payment will be the difference between the total amount due the Contractor pursuant to the Contract Documents and the sum of all payments previously made. Upon receipt of such notice and application for payment, the Owner will inspect the Work, and, if acceptable, submit to Contractor a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final application for payment by the Owner and compliance by the Contractor with

provisions in Section K, and Contractor's satisfaction of other provisions of the Contract Documents as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

- E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (2) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (3) consent of surety, if any, to final payment and (4), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien.
- E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.
- E.6.4 Contractor agrees to submit its final payment application within ninety (90) Days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to the Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) Days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be barred.

SECTION F PROJECT SITE CONDITIONS

F.1 USE OF PREMISES

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, Applicable Laws, permits or directions of the Owner. Contractor shall follow the Owner's instructions regarding use of premises, if any.

F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage and shall protect the Owner, workers and property from injury or loss arising in connection with the Contract. Contractor shall remedy acceptably to the Owner any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the Project Site or otherwise engaged in the undertaking of the Work and shall comply with the Contract Documents, best practices and all applicable provisions of federal, state and municipal safety laws and building codes to prevent

accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Project Site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner. The Owner has no responsibility for Project Site safety. Project Site safety shall be the responsibility of the Contractor.

- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall, immediately and in writing, report to the Owner, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 Contractor shall be responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, vehicles and materials on the Project Site.
- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials shall be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or limb or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with section D.
- F.2.7 Contractor shall comply with all Owner safety rules and regulations, if applicable. Prior to commencement of any Work, Contractor and Subcontractors shall be required to complete an Owner Contractor Safety Orientation and submit all Owner required safety plans.
- F.2.8 Contractor shall demonstrate that an employee drug testing program is in place.

F.3 CUTTING AND PATCHING

- F.3.1 If applicable, Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- F.3.2 If applicable, Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

From time to time as may be prudent or ordered by the Owner and, in any event, immediately after completion of the Work, the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four (24) hours after notification by the Owner the work may be

done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

F.5 ENVIRONMENTAL CONTAMINATION

F.5.1 Contractor shall be held responsible for and shall indemnify, defend (with counsel of Owner's choice), and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Work or Contractor's obligations under the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of the Contract, and Contractor shall take no action that would void or impair such coverages.

F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and regulatory agencies having jurisdiction in a manner that complies with Applicable Laws. Cleanup shall be at no cost to the Owner and shall be performed by properly qualified and, if applicable, licensed personnel.

F.5.1.2 Unless otherwise approved in the Solicitation Document, Contractor shall obtain the Owner's written consent prior to bringing onto the Project Site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any Applicable Laws. In any event, Contractor shall provide prior written notice to Owner when hazardous materials are brought on to the Project Site. The Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials on the Project Site, in accordance with all Applicable Laws;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Project Site; and
- (c) promptly clean up and remediate, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all Applicable Laws.

F.5.2 Contractor shall report all reportable quantity releases, as such releases are defined in Applicable Laws. Upon discovery, regardless of quantity, Contractor must verbally report all releases to the Owner in a prompt manner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest numbers, and any and all other documentation required by law).
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.

(e) Summary of communications about the release between Contractor and State, local or federal officials other than Owner. Any communication to the press will be done by Owner and Contractor will defer to Owner.

(f) Description of cleanup procedures employed or to be employed at the Project Site, including disposal location of spill residue.

(g) Personal injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

F.6.1 Unless disposition of environmental pollution is specifically a part of the Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by the Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl ("PCB"), or petroleum, and any substances, materials or wastes regulated by 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the Project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force, property or the environment.

F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the Project Site, not brought on to the Project Site by Contractor, Owner shall arrange for the proper disposition of such hazardous substance(s).

F.7 DEMOLITION

F.7.1 For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to

observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

G.1.3 In claims against any person or entity indemnified under Section G.1.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND

G.2.1 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

G.2.2 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

G.3 INSURANCE

G.3.1 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each

Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.2 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.3.4 General Liability Insurance:

G.3.4.1 Commercial General Liability: Upon execution of a Contract, Contractor shall obtain, and keep in effect at Contractor's expense for the term of the Contract, Commercial General Liability Insurance ("CGL") covering bodily injury and property damage in the amount of not less than \$1,000,000 per claim and \$2,000,000 per occurrence in a form satisfactory to Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under the Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis written on ISO Form GC 00 01 (12 04 or later) or an equivalent form approved in advance by Owner. The CGL shall provide separation of insured language. The policy or policies obtained by Contractor for purposes of fulfilling the requirements of this section shall be primary insurance with respect to the Owner. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than \$1,000,000 per claim and \$2,000,000 per occurrence. Contractor

and its Subcontractors shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on Project Site.

- G.3.4.3 Owner may adjust the insurance amounts required in Section G.3.4.1 and G.3.4.2 based upon institution specific risk assessments through the issuance of Supplemental General Conditions and a Contract.
- G.3.4.4 To the extent that the Contract Documents require the Contractor to provide professional design services, design-build, or certifications related to systems, materials, or equipment, the Contractor shall (1) purchase and maintain professional liability/errors-and-omissions insurance with limits of not less than \$1,000,000 for each claim and \$2,000,000 general annual aggregate and (2) cause those Subcontractors (of any tier) who are providing professional design services including any design-build services to procure and maintain professional liability/errors-and-omissions insurance with limits of not less than \$1,000,000 for each claim and \$2,000,000 general annual aggregate. This policy shall be for the protection of the Owner, its elected officials, officers, agents and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to the Contract. The Owner, at its option, may require a complete copy of the above policy.
- G.3.4.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).
- G.3.4.6 Umbrella Liability (if required by Owner through issuance of Supplemental General Conditions): Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Umbrella liability Insurance over and above the general liability, automobile liability and workers' compensation coverage if required by Owner in specified limits at time of requirement.
- G.3.4.7 Pollution Liability may be required by Owner through issuance of Supplemental General Conditions.
- G.3.5 Additional Insured: The general liability insurance coverage, automobile liability, umbrella, and pollution liability if required, shall include the Owner as additional insureds but only with respect to the Contractor's activities to be performed under the Contract. The additional-insured endorsement for CGL insurance must be written on ISO Form CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but shall not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94). Proof of insurance must include a copy of the endorsement showing "Clackamas County, its elected officials, agents, officers, and employees" as scheduled insureds.

If Contractor cannot obtain an insurer to name the Owner as additional insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of the Contract, Owners and Contractors Protective Liability Insurance, naming the Owner as additional insureds with not less than a \$2,000,000

limit per occurrence. This policy must be kept in effect for 36 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

- G.3.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

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

- G.3.7 Certificate(s) of Insurance/Insurance Carrier Qualification: As evidence of the insurance coverage required by the Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are additional insureds or loss payees for the Contract. A renewal certificate shall be sent to Owner at least 10 days prior to coverage expiration. Insurance coverage required under the Contract shall be obtained from insurance companies or entities acceptable to the Owner and that are eligible to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be subject to approval by the Owner in writing and shall be a condition precedent to the effectiveness of any Contract.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

- H.1.1 Time is of the essence. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein.
- H.1.2 Notice to Proceed. Unless otherwise directed in the Contract Documents, Contractor shall commence Work on the Project Site within fifteen (15) Days of the Notice to Proceed. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted in a form acceptable to Owner.
- H.1.3 Unless otherwise not required in the Construction Documents, Contractor shall participate in a pre-construction conference with the Owner's representative and designated design team. The

purpose of this pre-construction conference is to review the Contractor's proposed Schedule of Values and to review any other Project logistics to be coordinated between the parties.

H.1.4 Unless specifically extended by a Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2(f) and shall be subject to the provisions of Section D.1.

H.1.5 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

H.2 SCHEDULE

H.2.1 Contractor shall provide, by or before the pre-construction conference, the initial as-planned schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by Project components, labor trades, and long lead items broken down by building and/or floor where applicable. If Owner shall so elect, Contractor shall provide the schedule in CPM format showing the graphical network of planned activities, including i) a reasonably detailed list of all activities required to complete the Work; ii) the time and duration that each activity will take to completion; and iii) the dependencies between the activities. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. The schedule shall include the following: Notice to Proceed or the date the Work commences, if no Notice to Proceed is issued by Owner, Substantial Completion, and Final Completion. Schedules shall be updated monthly, unless otherwise required by the Contract Documents, and submitted with the monthly application for payment. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner as to the Contractor's sequencing, means, methods, or durations. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a claim for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

H.2.2 All Work shall be completed during normal weekdays (Monday through Friday) between the hours of 7:00 a.m. and 5:00 p.m. unless otherwise specified in the Contract Documents. Unless otherwise specified in the Contract Documents, no Work shall be performed during the following holidays:

- New Year's Day
- Martin Luther King Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving Day
- Christmas Day
- President's Day

When a holiday falls on a Sunday, the following Monday shall be recognized as a legal holiday. When a holiday falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

H.3 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having

jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (Punch List) work. At the end of the thirty-day period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the work not be complete, and all corrections made, the costs for all subsequent reinspections shall be borne by the Contractor. If Contractor fails to complete the Punch List work within the thirty (30) Day period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractor's obligations.

I.2 WARRANTY WORK

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for Defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent. The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand and at Contractor's sole expense. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand, without affecting Contractor's obligations. The Contractor shall perform the warranty Work by correcting defects within twenty-four (24) hours of notification by Owner, unless otherwise specified in the Contract Documents. Should the Contractor fail to respond within the specified response time, the Owner may, at its option, complete the necessary repairs using another contractor or its agents. If Owner completes the repairs using Owner's agent, Contractor shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's agent, plus related overhead and any direct non-salary costs. If Owner completes the repairs using another contractor, Contractor shall pay Owner the amount of Owner's direct costs billed by the other contractor for the work, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's agents who

are required to monitor that contractor's work. Work performed by Owner using Owner's own agents or those of another contractor shall not affect the Contractor's contractual duties under these provisions, including warranty provisions.

- I.2.2 Nothing in this Section I.2 provision shall negate guarantees or warranties for periods longer than one year including without limitation, such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until such portion of the Work covered by the applicable warranty has been accepted in writing by the Owner.
- I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I.2.6 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable as determined by Owner. Such adjustment shall be effected whether or not final payment has been made.

SECTION J

SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

- J.1.1 The Owner has the authority to suspend portions or all of the Work due to the following causes:
 - (a) Failure of the Contractor to correct unsafe conditions;
 - (b) Failure of the Contractor to carry out any provision of the Contract;
 - (c) Failure of the Contractor to carry out orders;
 - (d) Conditions, in the opinion of the Owner, which are unsuitable for performing the Work;
 - (e) Time required to investigate differing Project Site conditions; or
 - (f) Any reason considered to be in the public interest.
- J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension, and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

J.2 CONTRACTOR'S RESPONSIBILITIES

- J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the Project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the Work in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's agents or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension, and any liquidated damages arising from the delay. If the suspension was caused by acts or omissions of the Owner, the Contractor may be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party shall owe the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

- J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
 - (a) If Contractor should, voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
 - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
 - (c) If a receiver should be appointed on account of Contractor's insolvency;
 - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
 - (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner;
 - (f) If Contractor is otherwise in breach of any part of the Contract; or
 - (g) If Contractor is in violation of Applicable Laws, either in the conduct of its business or in its performance of the Work.

- J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and, in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If

the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE, NON-APPROPRIATION OF FUNDS, OR FORCE MAJEURE

- J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines: (a) that termination of the Contract is in the best interest of Owner or the public; (b) that the Owner failed to receive funding, appropriations, allocations or other expenditure authority as contemplated by Owner's budget and Owner determines, in its sole determination, and its assessment and ranking of the policy objectives explicit or implicit in Owner's budget, Owner may determine it is necessary to and may terminate the Contract.; or (c) in the event of Force Majeure.
- J.5.2 The Owner shall provide the Contractor with seven (7) Days prior written notice of a termination for Owner's or for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination. If the Contract is terminated for public convenience, neither the Contractor nor its Surety shall be relieved of liability for damages or losses suffered by the Owner as a result of defective, unacceptable or unauthorized Work completed or performed.

J.6 ACTION UPON TERMINATION

- J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- J.6.2 As directed by the Owner, Contractor shall, upon termination, transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.
- J.6.3 Upon Owner's notice of termination pursuant to either Section J.4 or J.5, if Owner shall so elect, Contractor shall assign to the Owner such subcontracts and orders as Owner shall specify. In the event Owner elects to take assignment of any such subcontract or order, Contractor shall take such action and shall execute such documents as Owner shall reasonably require for the effectiveness of such assignment and Contractor shall ensure that no contractual arrangement between it and its subcontractors or suppliers of any tier or sub-tier shall prevent such assignment.

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide Record Documents for the entire Project to Owner. Record Documents shall depict the Project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner prior to submission of any pay request for more than 75% of the Work. Owner's receipt of the O & M Manuals shall be a condition precedent to any payment thereafter due. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, telephone list and contact information for all consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner shall review and return one O & M Manual for any modifications or adjustments required. Prior to submission of its final pay request, Contractor shall deliver two (2) complete and approved sets of O & M Manuals in paper form and one (1) complete and approved set in electronic form to the Owner and Owner's receipt of the O & M Manuals shall be a condition precedent to Owner's obligation to make final payment.

K.3 COMPLETION NOTICES

- K.3.1 Contractor shall provide Owner written notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate. Both completion notices must be signed and notarized by the Contractor and signed by the Architect/Engineer (if applicable) and Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.
- K.3.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a Punch List be prepared by the Owner with submission of the request for the Substantial Completion notice.

K.4 TRAINING

As part of the Work, and prior to submission of the final application for payment, the Contractor shall schedule with the Owner training sessions for all equipment and systems as required by the Contract Documents. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner to provide its personnel with adequate notice. If assignments arise because of termination under Section J.4, then such assignments shall not relieve Contractor of liability hereunder. The O & M Manual shall be used as a basis for training. In addition to any off-Project Site training required by the Contract Documents, training shall include a formal session conducted at the Project Site after the equipment and/or system is completely installed and operational in its normal operating environment.

K.5 EXTRA MATERIALS

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the Contract Documents prior to final payment. Delivery point for extra materials shall be designated by the Owner.

K.6 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental and pollution clean-up, remediation and closure have been completed in accordance with all Applicable Laws and pursuant to the authority of all agencies having jurisdiction, and Contractor shall provide Owner with any and all documentation related to the same, including but not limited to directives, orders, letters, certificates and permits related to or arising from such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above. Contractor's completion of its obligations under this Section K.6 and Owner's receipt of documents evidencing such completion shall be a condition precedent to Owner's obligation to make final payment.

K.7 CERTIFICATE OF OCCUPANCY

Owner's receipt of an unconditioned certificate of occupancy from the appropriate state and/or local building officials shall be a condition precedent to Owner's obligation to make final payment, except to the extent failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

K.8 OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Owner all property of Owner issued to Contractor during construction such as keys, security passes, Project Site admittance badges, and all other pertinent items. Upon notice from Owner, Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's agents continue with the Work.

The Owner's property is drug free and weapons free areas and the use of tobacco products is only allowed in designated areas. Contractor shall be required to ensure that its employees, Subcontractors and agents shall comply with these requirements.

SECTION L GENERAL PROVISIONS

L.1 NO THIRD PARTY BENEFICIARIES

Owner and Contractor are the only parties to the Contract and are the only parties entitled to enforce its terms. Nothing in the Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of the Contract.

L.2 SEVERABILITY

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

L.3 ACCESS TO RECORDS

L.3.1 Contractor shall keep, at all times on the Project Site, one record copy of the complete Contract Documents, including the Plans, Specifications, addenda, and Change Orders (if any) in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner access thereto.

L.3.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than ten (10)

years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract, including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Work or the Contract shall be subject to litigation, Contractor shall retain all such records until all litigation is resolved and Contractor shall continue to provide Owner and/or its agents with full access to such records until such time as all litigation is complete and all periods for appeal have expired and full and final satisfaction of any judgment, order or decree is recorded and Owner receives a record copy of documentation from Contractor.

L.4 WAIVER

Failure of the Owner to enforce any provision of the Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of the Contract.

L.5 SUCCESSORS IN INTEREST

The provisions of the Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

L.6 GOVERNING LAW

The Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof.

L.7 APPLICABLE LAW

Contractor hereto agrees to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.

L.8 NON-EXCLUSIVE RIGHTS AND REMEDIES

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

L.9 INTERPRETATION

The titles of the sections of the Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

L.10 DEBT LIMITATION

The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

L.11 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to the Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or

immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

L. 12 SURVIVAL

All warranty, indemnification, and record retention provisions of the Contract, and all of Contractor's other obligations under the Contract that are not fully performed by the time of Final Completion or termination, and all other rights and obligations which by their context are intended to survive, shall survive Final Completion or any termination of the Contract.

L.13 SEVERABILITY

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

L.14 ACCESS TO RECORDS

L.14.1. Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Construction Change Directives and addenda, in good order and marked currently to record field changes and selections made during construction, and one copy of Shop Drawings, Project Data, Samples and similar submittals, and shall at all times give the Owner access thereto.

L.14.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than ten (10) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract, including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Work or this Contract shall be subject to litigation, Contractor shall retain all such records until all litigation is resolved and Contractor shall continue to provide Owner and/or its agents with full access to such records until such time as all litigation is complete and all periods for appeal have expired and full and final satisfaction of any judgment, order or decree is recorded and Owner receives a record copy of documentation from Contractor.

L.15 WAIVER

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

L. 16 NO ATTORNEY FEES.

In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.



**CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT
SUPPLEMENTAL GENERAL CONDITIONS**

**PROJECT: #2021-18 Tri-City Water Resource Recovery Facility (“WRRF”)
Mitigation Planting**

The following modifies the January 1, 2020 Clackamas County General Conditions for Public Improvement Contracts (“County General Conditions”) for this Contract. Except as modified below, all other terms and conditions of the County General Conditions shall remain in effect.

The terms used in these Supplemental Conditions have the meanings stated in the Clackamas County General Conditions. Additional terms used in these Supplemental Conditions have the meanings stated below, which are applicable to both the singular and plural thereof. The address system used in these Supplemental Conditions is the same as the address system used in the Clackamas County General Conditions, with the prefix “SC” added thereto.

SC A.3.1(a)

Replace A.3.1 (a) through A.3.1 (e) with the following:

- a) Permits from outside agencies;
- b) The Contract including: exhibits (and addenda and any amendments thereto), Change Orders, engineer’s written interpretation and clarification, and the Notice to Proceed, with those of later date having precedence over those of an earlier date;
- c) Supplemental General Conditions;
- d) Clackamas County General Conditions
- e) Specifications – Division 01;
- f) Specifications Division 02;
- g) Construction Drawings (Construction Plans);
- h) Bonds

Design Details: Figure dimensions and dimensions that can be computed, on plans shall take precedence over scale dimensions. The Drawings with the higher level of detail take precedence over less detailed Drawings.

SC B.4 PERMITS

The contents of Section B.4 - Permits are hereby deleted in its entirety and replaced with the following:

Contractor will be responsible for obtaining all required permits and maintaining compliance with those permits throughout the course of the Work. Owner will pay the cost of obtaining all permits. The Contractor shall be responsible for any penalties or fines that result from Contractor's noncompliance with the terms of the permits. The Contractor will be responsible for compliance with the terms of all permits throughout the performance of the Work.

SC D.1 Changes in Work

The following Section is added to D.1 – Changes in Work:

D.1.7 Change Order Authorization.

Throughout the performance of the Work under this Agreement, the Owner's Project Manager is hereby granted the authority to verbally authorize change orders in the field for an amount up to \$10,000. As soon as possible following the authorization, the Owner's Project Manager shall complete the change order form provided by Clackamas County Procurement ("Procurement"), obtain the signature of Owner's Director or other authorized signatory, and submit the form to Procurement for processing. As soon as the Director signs off on the change order form, the Project Manager may then authorize another change order in the future for up to \$10,000 following the same procedure above. Each change order should include the cumulative cost of the entire change and may not be artificially broken up into multiple change orders to fall under the dollar threshold listed above. The authority granted to the Project Manager is limited by the Director's authorization to amend the Agreement under Clackamas County's Local Contract Review Board Rules and is subject to the discretion of the Director, who may suspend or restrict the Project Manager's ability to authorize change orders at any time for any reason.

E.5.1.1

Delete everything after the first sentence.

F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC

Add the following after Paragraph F.2.8:

F.2.9 The following notice is applicable to Contractors who perform excavation Work:
ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0090. You may obtain copies of the rules by calling the center at (877) 668-4001.

H.1 CONTRACT PERIOD

Add the following after Paragraph H.1.5:

- H.1.6 As indicated in H.1.1, time is of the essence in the performance of this Contract. If Contractor fails to complete the Work within the Contract time, the actual damage to Owner for the delay will be substantial, but will be difficult or impractical to determine. It is therefore agreed, that Contractor will pay to Owner, not as a penalty, but as liquidated damages, the amount of \$415 each and every day that the date of final completion extends beyond the Contract Time.

Payment of liquidated damages shall not release Contractor from its obligation in respect to the complete performance of the Work, nor shall the payment of liquidated damages constitute a waiver of Owner's right to collect any additional damages that it may sustain by failure of Contractor to fully perform the Work, as it is the intent of the parties that the liquidated damages are a full and complete payment only for failure of Contractor to complete the Work on time. Owner expressly reserves the right to make claims for any and all other damages that Owner may incur due to contractor's failure to perform in strict accordance with this Contract.

K.3 COMPLETION NOTICES

Add the following after Paragraph K.3.2:

- K.3.3 Contractor shall provide Owner completed Certificate of Compliance (attached) at the time of Final Completion and before final payment will be released.

CERTIFICATE OF COMPLIANCE
Water Environment Services
Tri City WRRF Mitigation Planting

TO: Water Environment Services

PROJECT NO: P632293

CONTRACT FOR: _____

CONTRACT DATE: _____

I (We) hereby certify that all work has been performed and materials supplied in accordance with the Plans, Specifications, and Contract Documents for the above work, and that:

- A. No less than prevailing rates of wages as ascertained by the governing body of the contracting agency have been paid to laborers, workmen, and mechanics employed on this work.
- B. There have been neither unauthorized substitutions of subcontractors nor have any subcontracts been entered into without the name of the subcontractors having been submitted to the Engineer prior to the start of such subcontractor work.
- C. No subcontract was assigned or transferred or performed by any subcontractor other than the original subcontractor, without prior notice having been submitted to the Engineer together with the names of all subcontractors.
- D. All claims for material and labor and other services performed in connection with these Specifications have been paid. No further claims will be made and all liens have been satisfied and lifted.
- E. All monies due the State Industrial Accident Funds, the State Unemployment Compensation Trust Fund, the State Tax Commission, hospital associations, and/or others have been paid.

CERTIFIED BY:

CONTRACTOR

DATE

TITLE

Subscribed and sworn to before me this day of _____, 2018

Notary Public for the State of _____

My Commission Expires _____

END OF SECTION



CLACKAMAS COUNTY
PUBLIC IMPROVEMENT CONTRACT
PROJECT INFORMATION, PLANS, SPECIFICATIONS AND DRAWINGS

PROJECT: #2021-18 Tri-City Water Resource Recovery Facility (“WRRF”)
Mitigation Planting Project

Project Scope:

The Work under this Contract will consist of, but is not limited to furnishing all labor, materials, and equipment necessary to construct the landscaping improvements along the boundary of the Tri-City Water Resource Recovery Facility (“WRRF”). This work includes clearing of invasive species, preparation of planting areas, temporary erosion control, protection of existing trees, installation of the irrigation system, and planting. This work will occur both inside the fenced boundaries of the WRRF (West Planting Area) and along the adjacent trail just outside the fence (North Planting Area). Coordination with Oregon City regarding impacts to adjacent parks will be required for construction of the north planting areas.

Key Dates:

All Basic Bid Work may begin as soon as the Notice to Proceed (“NTP”) is issued
Substantial Completion: 120 days from issuance of NTP
Final Completion: 150 days from issuance of NTP

The Scope further includes the following Plans, Specifications and Drawings:

- Tri-City WRRF Mitigation Planting-Specifications, September 3, 2020
- Tri-City Water Resource Recovery Facility Drawing Set- G0.0, G0.1, L0.0, L0.1, L1.0, L1.1, L1.2, L2.0, L2.1, L2.2, L3.0, L3.1, L3.2

Tri-City WRRF Mitigation Planting

Specifications | September 3, 2020

OWNER:

Clackamas Water Environment Services

PRIME CONSULTANT:

GreenWorks, PC



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SECTION 015639 - TEMPORARY TREE AND PLANT PROTECTION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes general protection and pruning of existing trees and plants that are affected by execution of the Work, whether temporary or permanent construction.
- B. Related Requirements:
 - 1. Section 311000 "Site Clearing" for removing existing trees and shrubs.

1.3 DEFINITIONS

- A. Caliper: Diameter of a trunk measured by a diameter tape at a height 6 inches above the ground for trees up to and including 4-inch size at this height and as measured at a height of 12 inches above the ground for trees larger than 4-inch size.
- B. Caliper (DBH): Diameter breast height; diameter of a trunk as measured by a diameter tape at a height 54 inches above the ground line.
- C. Plant-Protection Zone: Area surrounding individual trees, groups of trees, shrubs, or other vegetation to be protected during construction and indicated on Drawings.
- D. Tree-Protection Zone: Area surrounding individual trees or groups of trees to be protected during construction and indicated on Drawings.
- E. Vegetation: Trees, shrubs, groundcovers, grass, and other plants.

1.4 PREINSTALLATION MEETINGS

- A. Preinstallation Conference: Conduct conference at WES Tri-City Water Resource Recovery Facility 15941 S. Agnes Ave, Oregon city. OR 97045.
 - 1. Review methods and procedures related to temporary tree and plant protection including, but not limited to, the following:
 - a. Owner's representative responsibilities.
 - b. Quality-control program.
 - c. Coordination of Work and equipment movement with the locations of protection zones.

- d. Trenching by hand or with air spade within protection zones.
- e. Field quality control.

1.5 ACTION SUBMITTALS

- A. Product Data: For each type of product.
- B. Samples: For each type of the following:
 1. Protection-Zone Fencing: Assembled Samples of manufacturer's standard size made from full-size components.
 2. Protection-Zone Signage: Full-size Samples of each size and text, ready for installation.

1.6 INFORMATIONAL SUBMITTALS

- A. Existing Conditions: Documentation of existing trees and plantings indicated to remain, which establishes preconstruction conditions that might be misconstrued as damage caused by construction activities.
 1. Use sufficiently detailed photographs or video recordings.
 2. Include plans and notations to indicate specific wounds and damage conditions of each tree or other plants designated to remain.
- B. Tree Protection Fencing Plan: It is the responsibility of the contractor to submit a tree protection fencing plan for acceptance by owner's representative prior to beginning work on the site.
- C. Quality-control program.

1.7 QUALITY ASSURANCE

- A. Quality-Control Program: Prepare a written program to systematically demonstrate the ability of personnel to properly follow procedures and handle materials and equipment during the Work without damaging trees and plantings. Include dimensioned diagrams for placement of protection zone fencing and signage, the arborist's and tree-service firm's responsibilities, instructions given to workers on the use and care of protection zones, and enforcement of requirements for protection zones.

1.8 FIELD CONDITIONS

- A. The following practices are prohibited within protection zones:
 1. Storage of construction materials, debris, or excavated material.
 2. Cleaning of materials or equipment.
 3. Moving or parking vehicles or equipment.
 4. Erection of sheds or structures.
 5. Impoundment of water.
 6. Mechanical excavation or other digging unless otherwise it is by hand.
 7. Attachment of signs to or wrapping materials around trees or plants.

- B. Do not direct vehicle or equipment exhaust toward protection zones.
- C. Prohibit heat sources, flames, ignition sources, and smoking within or near protection zones.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Backfill Soil: Stockpiled soil from project site of suitable moisture content and granular texture for placing around tree; free of stones, roots, plants, sod, clods, clay lumps, pockets of coarse sand, concrete slurry, concrete layers or chunks, cement, plaster, building debris, and other extraneous materials harmful to plant growth.
- B. Protection-Zone Fencing or Sediment Fencing: Fencing fixed in position and meeting one of the following requirements: Previously used materials may be used when approved by Owner's Representative.
 - 1. Plastic Protection-Zone Fencing: Plastic construction fencing constructed of high-density extruded and stretched polyethylene fabric with 2-inch maximum opening in pattern and weighing a minimum of 0.4 lb./ft.; remaining flexible from minus 60 to plus 200 deg F; inert to most chemicals and acids; minimum tensile yield strength of 2000 psi and ultimate tensile strength of 2680 psi; secured with plastic bands or galvanized-steel or stainless-steel wire ties; and supported by tubular or T-shape galvanized-steel posts spaced not more than 96 inches apart.
 - a. Height: 4'
 - b. Color: High-visibility orange, nonfading.
 - 2. Gates: Single swing access gates matching material and appearance of fencing, to allow for maintenance activities within protection zones; leaf width 36 inches.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Erosion and Sedimentation Control: Examine the site to verify that temporary erosion- and sedimentation-control measures are in place. Verify that flows of water redirected from construction areas or generated by construction activity do not enter or cross protection zones.
- B. Prepare written report, endorsed by arborist, listing conditions detrimental to tree and plant protection.

3.2 PREPARATION

- A. Locate and clearly identify trees, shrubs, and other vegetation to remain. Flag each tree trunk at 54 inches above the ground.

- B. Protect tree root systems from damage caused by runoff or spillage of noxious materials while mixing, placing, or storing construction materials. Protect root systems from ponding, eroding, or excessive wetting caused by dewatering operations.

3.3 PROTECTION ZONES

- A. Protection-Zone Fencing or Sediment Fencing: Install protection-zone fencing along edges of protection zones before materials or equipment are brought on the site and construction operations begin in a manner that will prevent people from easily entering protected areas except by entrance gates. Construct fencing so as not to obstruct safe passage or visibility at vehicle intersections where fencing is located adjacent to pedestrian walkways or in close proximity to street intersections, drives, or other vehicular circulation.
 - 1. Plastic Fencing: Install to comply with drawings and details
 - 2. Posts: Set or drive posts into ground as shown on the details. Where a post is located on existing paving or concrete to remain, provide appropriate means of post support acceptable to Owner's Representative.
 - 3. Access Gates: Install where indicated on approved tree protection plan; adjust to operate smoothly, easily, and quietly; free of binding, warp, excessive deflection, distortion, nonalignment, misplacement, disruption, or malfunction throughout entire operational range. Confirm that latches and locks engage accurately and securely without forcing or binding.
- B. Protection-Zone Signage: Install protection-zone signage in visibly prominent locations in a manner approved by Owner's Representative. Install one sign spaced approximately 50 feet on protection-zone fencing.
- C. Maintain protection zones free of weeds and trash.
- D. Maintain protection-zone fencing and signage in good condition as acceptable to Owner's Representative and remove when construction operations are complete, and equipment has been removed from the site.
 - 1. Do not remove protection-zone fencing, even temporarily, to allow deliveries or equipment access through the protection zone.
 - 2. Temporary access is permitted subject to preapproval in writing by arborist if a root buffer effective against soil compaction is constructed as directed by arborist. Maintain root buffer so long as access is permitted.

3.4 EXCAVATION.

- A. Trenching within Protection Zones: Where utility trenches are required within protection zones, excavate under or around tree roots by hand or with air spade, or tunnel under the roots by drilling, auger boring, or pipe jacking. Do not cut main lateral tree roots or taproots; cut only smaller roots that interfere with installation of utilities. Cut roots as required for root pruning. If excavating by hand, use narrow-tine spading forks to comb soil and expose roots.
- B. Redirect roots in backfill areas where possible. If encountering large, main lateral roots, expose roots beyond excavation limits as required to bend and redirect them without breaking. If

encountered immediately adjacent to location of new construction and redirection is not practical, cut roots approximately 3 inches back from new construction and as required for root pruning.

- C. Do not allow exposed roots to dry out before placing permanent backfill. Provide temporary earth cover or pack with peat moss and wrap with burlap. Water and maintain in a moist condition. Temporarily support and protect roots from damage until they are permanently relocated and covered with soil.

3.5 ROOT PRUNING

- A. Prune tree roots that are affected by temporary and permanent construction. Prune roots per Owner's Representative recommendation and as follows:
 - 1. Cut roots manually by digging a trench and cutting exposed roots with sharp pruning instruments; do not break, tear, chop or slant the cuts. Do not use a backhoe or other equipment that rips, tears, or pulls roots.
 - 2. Cut Ends: Coat cut ends of roots more than 1-1/2 inches in diameter with an emulsified asphalt or other coating formulated for use on damaged plant tissues if required by owner's representative.
 - 3. Temporarily support and protect roots from damage until they are permanently redirected and covered with soil.
 - 4. Cover exposed roots with burlap and water regularly.
 - 5. Backfill as soon as possible.
- B. Root Pruning at Edge of Protection Zone: Prune tree roots 12 inches outside of the protection zone by cleanly cutting all roots to the depth of the required excavation.
- C. Root Pruning within Protection Zone: Clear and excavate by hand or with air spade to the depth of the required excavation to minimize damage to tree root systems. If excavating by hand, use narrow-tine spading forks to comb soil to expose roots. Cleanly cut roots as close to excavation as possible.

3.6 CROWN PRUNING

- A. Prune branches that are affected by temporary and permanent construction. Prune branches as directed by Owner's Representative.
 - 1. Prune to remove only injured, broken, dying, or dead branches unless otherwise indicated. Do not prune for shape unless otherwise indicated.
 - 2. Do not remove or reduce living branches to compensate for root loss caused by damaging or cutting root system.
 - 3. Pruning Standards: Prune trees according to ANSI A300 (Part 1).
 - a. Type of Pruning: Where directed by Owner's Representative.
 - b. Specialty Pruning: Where directed by Owner's Representative.
- B. Unless otherwise directed by arborist and acceptable to Owner's Representative, do not cut tree leaders.

- C. Cut branches with sharp pruning instruments; do not break or chop.
- D. Do not paint or apply sealants to wounds.
- E. Provide subsequent maintenance pruning during Contract period as recommended by arborist.
- F. Chip removed branches and place on site as directed by Owner's Representative.

3.7 FIELD QUALITY CONTROL

- A. Inspections: Engage a qualified arborist to direct plant-protection measures in the vicinity of trees, shrubs, and other vegetation indicated to remain and to prepare inspection reports.

3.8 REPAIR AND REPLACEMENT

- A. General: Repair or replace trees, shrubs, and other vegetation indicated to remain or to be relocated that are damaged by construction operations, in a manner approved by Owner's Representative.
 - 1. Submit details of proposed pruning and repairs.
 - 2. Perform repairs of damaged trunks, branches, and roots within 24 hours according to arborist's written instructions.
 - 3. Replace trees and other plants that cannot be repaired and restored to full-growth status, as determined by Owner's Representative.
- B. Trees: Remove and replace trees damaged during construction operations that were indicated to remain if they are more than 25 percent dead or in an unhealthy condition as determined by the Owner's Representative.
 - 1. Trees: Provide replacement at size and number per "Oregon City Street Tree Planting and Removal Guide".
 - 2. Plant and maintain new trees as specified in Section 329300 "Plants."

3.9 DISPOSAL OF SURPLUS AND WASTE MATERIALS

- A. Disposal: Remove excess excavated material, displaced trees, trash, and debris and legally dispose of them off Owner's property.

END OF SECTION 015639

SECTION 311000 - SITE CLEARING

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section Includes:

1. Protecting existing vegetation to remain.
2. Removing existing vegetation.
3. Clearing and grubbing.
4. Stripping and stockpiling topsoil.
5. Removing above- and below-grade site improvements.
6. Disconnecting, capping, or sealing, and.
7. Temporary erosion and sedimentation control.

- B. Related Requirements:

1. Section 015639 "Temporary Tree and Plant Protection"
2. Section 328400 "Planting Irrigation" for connection or repair of existing irrigation system.
3. Section 329113 "Soil Preparation" for reuse of stockpiled topsoil for planting soil media for plants.

1.3 DEFINITIONS

- A. Subsoil: Soil beneath the level of subgrade; soil beneath the topsoil layers of a naturally occurring soil profile, typified by less than 1 percent organic matter and few soil organisms.
- B. Surface Soil: Soil that is present at the top layer of the existing soil profile. In undisturbed areas, surface soil is typically called "topsoil," but in disturbed areas such as urban environments, the surface soil can be subsoil.
- C. Topsoil: Top layer of the soil profile consisting of existing native surface topsoil or existing in-place surface soil; the zone where plant roots grow.
- D. Plant-Protection Zone: Area surrounding individual trees, groups of trees, shrubs, or other vegetation to be protected during construction and indicated on Drawings.
- E. Tree-Protection Zone: Area surrounding individual trees or groups of trees to be protected during construction as indicated on Drawings and according to requirements in Section 015639 "Temporary Tree and Plant Protection."

- F. Vegetation: Trees, shrubs, groundcovers, grass, and other plants.

1.4 PREINSTALLATION MEETINGS

- A. Preinstallation Conference: Conduct conference at Project site.
 - 1. Review methods and procedures related to earthmoving, including, but not limited to, the following:
 - a. Personnel and equipment needed to make progress and avoid delays.
 - b. Coordination of Work with utility locator service.
 - c. Coordination of Work and equipment movement with the locations of tree- and plant-protection zones.
 - d. Field quality control.

1.5 MATERIAL OWNERSHIP

- A. Except for materials indicated to be stockpiled or otherwise remain Owner's property, cleared materials shall become Contractor's property and shall be removed from Project site.

1.6 INFORMATIONAL SUBMITTALS

- A. Existing Conditions: Documentation of existing trees and plantings, adjoining construction, and site improvements that establishes preconstruction conditions that might be misconstrued as damage caused by site clearing.
 - 1. Use sufficiently detailed photographs or video recordings.
 - 2. Include plans and notations to indicate specific wounds and damage conditions of each tree or other plant designated to remain.
- B. Weed removal and abatement plan incorporating the County's WeedWise program.
- C. Topsoil stripping and stockpiling program.
- D. Record Drawings: Identifying and accurately showing locations of capped utilities and other subsurface structural, electrical, and mechanical conditions.

1.7 QUALITY ASSURANCE

- A. Topsoil Stripping and Stockpiling Program: Prepare a written program to systematically demonstrate the ability of personnel to properly follow procedures and handle materials and equipment during the Work. Include dimensioned diagrams for placement and protection of stockpiles.
- B. Rock Stockpiling Program: Prepare a written program to systematically demonstrate the ability of personnel to properly follow procedures and handle materials and equipment during the Work. Include dimensioned diagrams for placement and protection of stockpiles.

1.8 FIELD CONDITIONS

- A. Traffic: Minimize interference with adjoining roads, streets, walks, and other adjacent occupied or used facilities during site-clearing operations.
 - 1. Do not close or obstruct streets, walks, or other adjacent occupied or used facilities without permission from Owner and authorities having jurisdiction.
 - 2. Provide alternate routes around closed or obstructed trafficways if required by Owner or authorities having jurisdiction.
- B. Improvements on Adjoining Property: Authority for performing site clearing indicated on property adjoining Owner's property will be obtained by Owner before award of Contract.
 - 1. Do not proceed with work on adjoining property until directed by Owner's Representative.
- C. Utility Locator Service: Notify Call Before You Dig for area where Project is located before site clearing.
- D. Do not commence site clearing operations until temporary erosion- and sedimentation-control measures are in place.
- E. Tree- and Plant-Protection Zones: Protect according to requirements in Section 015639 "Temporary Tree and Plant Protection."
- F. Soil Stripping, Handling, and Stockpiling: Perform only when the soil is dry or slightly moist.
- G. Verify conditions are acceptable to commence safely and without damage to existing features to be retained.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. Satisfactory Soil Material: Requirements for satisfactory soil material are specified in Section 312000 "Earth Moving."
 - 1. Obtain approved borrow soil material off-site when satisfactory soil material is not available on-site.

PART 3 - EXECUTION

3.1 PREPARATION

- A. Protect and maintain benchmarks and survey control points from disturbance during construction.

- B. Verify which trees, shrubs, and other vegetation are to remain. or to be relocated have been flagged and that protection zones have been identified and enclosed according to requirements in Section 015639 "Temporary Tree and Plant Protection."
- C. Protect existing site improvements to remain from damage during construction.
 - 1. Restore damaged improvements to their original condition, as acceptable to Owner.

3.2 TEMPORARY EROSION AND SEDIMENTATION CONTROL

- A. Provide temporary erosion- and sedimentation-control measures to prevent soil erosion and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways, according to erosion- and sedimentation-control Drawings and requirements of authorities having jurisdiction.
- B. Verify that flows of water redirected from construction areas or generated by construction activity do not enter or cross protection zones.
- C. Inspect, maintain, and repair erosion- and sedimentation-control measures during construction until permanent vegetation has been established.
- D. Remove erosion and sedimentation controls and restore and stabilize areas disturbed during removal.

3.3 TREE AND PLANT PROTECTION

- A. Protect trees and plants remaining on-site according to requirements in Section 015639 "Temporary Tree and Plant Protection."
- B. Repair or replace trees, shrubs, and other vegetation indicated to remain or be relocated that are damaged by construction operations, including staging areas.
- C. Trees and plants outside of the work area, but not indicated to be protected, shall have their driplines remain clear of all construction activities including excavated soil materials and construction equipment staging.

3.4 EXISTING UTILITIES

- A. Owner will arrange for disconnecting and sealing indicated utilities that serve existing structures before site clearing, when requested by Contractor.
 - 1. Verify that utilities have been disconnected and capped before proceeding with site clearing.
- B. Locate, identify, disconnect, and seal or cap utilities indicated to be removed.
 - 1. Owner will arrange to shut off indicated utilities when requested by Contractor.

- C. Locate, identify, and disconnect utilities indicated to be abandoned in place.
- D. Interrupting Existing Utilities: Do not interrupt utilities serving facilities occupied by Owner or others, unless permitted under the following conditions and then only after arranging to provide temporary utility services according to requirements indicated:
 - 1. Notify Owner's Representative not less than two days in advance of proposed utility interruptions.
 - 2. Do not proceed with utility interruptions without Owner's Representative's written permission.
- E. Excavate for and remove underground utilities indicated to be removed.

3.5 CLEARING AND GRUBBING

- A. Remove weeds and invasive plants including but not limited to:
 - 1. *Cirsium arvense* (Canadian Thistle)
 - 2. *Clematis vitalba* (Old Man's Beard)
 - 3. *Convolvulus* spp. (Morning Glory)
 - 4. *Crataegus laevigata* (English hawthorn)
 - 5. *Cytisus scoparius* (Scotch Broom)
 - 6. *Dipsacus sylvestris* (Common Teasel)
 - 7. *Festuca arundinaceae* (Tall Fescue)
 - 8. *Hedera helix* (English Ivy)
 - 9. *Holcus lanatus* (Velvet Grass)
 - 10. *Lolium* spp. (Rye Grasses)
 - 11. *Lotus corniculatus* (Bird's Foot Trefoil)
 - 12. *Lythrum salicaria* (Purple Loose Strife)
 - 13. *Melilotus* spp. (Sweet Clover)
 - 14. *Myriophyllum spicatum* (Eurasian Milfoil)
 - 15. *Phalaris arundinaceae* (Reed Canary Grass)
 - 16. *Rubus discolor* (Himalayan Blackberry)
 - 17. *Solanum* spp. (Nightshade)
 - 18. *Trifolium* spp. (Clovers)
- B. Also refer to Clackamas County's "WeedWise" Program for additional information on weeds and their removal.
- C. Remove obstructions, trees, shrubs, and other vegetation to permit installation of new construction and also remove invasive trees as directed by Owner's Representative
 - 1. Do not remove trees, shrubs, and other vegetation indicated to remain or to be relocated.
 - 2. Non-hazardous dead trees or snags to remain.
 - 3. Grind down stumps of invasive dead trees and remove roots larger than 2 inches in diameter, obstructions, and debris to a depth of twelve inches below exposed subgrade.
 - 4. Contact Owner if hazardous trees are identified.
 - 5. Use only hand methods or air spade for clearing and grubbing invasive trees within construction limits, but outside remaining work areas.

6. Chip removed trees and their branches and stockpile in areas approved by Owner's Representative (can be used for organic mulch – see Section 329300).
 7. Remove all weeds, invasive and non-native plants.
- D. Fill depressions caused by clearing and grubbing operations with satisfactory soil material unless further excavation or earthwork is indicated.
1. Place fill material in horizontal layers not exceeding a loose depth of 8 inches, compact each layer to a density equal to adjacent original ground.

3.6 TOPSOIL STRIPPING

- A. Remove sod and grass before stripping topsoil.
- B. Strip topsoil to depth of 6 inches in a manner to prevent intermingling with underlying subsoil or other waste materials.
1. Separate subsoil materials from topsoil. Remove gravel and other organic objects larger than 4 inches in diameter including debris, branches, and roots. Remove all nonsoil or unwanted objects larger than 1 inch in diameter including weeds, trash, or waste materials.
- C. Stockpile topsoil away from edge of excavations without intermixing with subsoil or other materials. Grade and shape to drain. Cover to prevent windblown dust and erosion by water.
1. Limit height of topsoil stockpiles to 72 inches.
 2. Do not stockpile topsoil within protection zones.
 3. Maintain topsoil quality and protect from possible contamination from adjacent weed seed banks, excess runoff, and construction activities that may impact topsoil viability for reuse according to the requirements in Section 329113 "Soil Preparation."
 4. Stockpile surplus topsoil to allow for respreading deeper topsoil.

3.7 SITE IMPROVEMENTS

- A. Remove existing above- and below-grade improvements as indicated and necessary to facilitate new construction.
- B. Remove slabs, paving, curbs, gutters, and aggregate base as indicated.
1. Unless existing full-depth joints coincide with line of demolition, neatly saw-cut along the line of existing pavement to remain before removing adjacent existing pavement. Saw-cut faces vertically.
 2. Paint cut ends of steel reinforcement in concrete to remain with two coats of antirust coating, following coating manufacturer's written instructions.

3.8 DISPOSAL OF SURPLUS AND WASTE MATERIALS

- A. Remove surplus soil material, unsuitable topsoil, obstructions, demolished materials, and waste materials including trash and debris, and legally dispose of them off Owner's property.

END OF SECTION 311000

SECTION 328400 - PLANTING IRRIGATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section Includes:

1. Piping.
2. Valves.
3. Transition fittings.
4. Miscellaneous piping specialties.
5. Sprinklers.
6. Controllers and electrical control wiring connectors.
7. Boxes for irrigation equipment.

- B. Related Sections:

1. Section 329113 "Soil Preparation" for placement of planting soil.
2. Section 329200 "Turf and Grasses" for turf and grass requirements.
3. Section 329300 "Plants" for plant requirements.
4. Section 329310 "Landscape Maintenance"

1.3 DEFINITIONS

- A. ASIC: American Society of Irrigation Consultants.
- B. Controller: Programmable electronic device that operates automatic irrigation systems.
- C. Drain Piping: Downstream from lateral-piping drain valves. Piping is not under pressure.
- D. ET Controllers: EvapoTranspiration Controllers. Irrigation controllers which use some method of weather-based adjustment of irrigation. These adjusting methods include use of historical monthly averages of ET; broadcasting of ET measurements; or use of on-site sensors to track ET.
- E. Evapotranspiration: The process of evaporation from plant and soil surfaces and from within plant tissues; also referred to and abbreviated as "ET."
- F. Flow: The volume of water moving over time through a system as measured in gallons per minute (gpm).

- G. Lateral Line Piping: Downstream from control valves to sprinklers, specialties, and drain valves. Piping is under pressure during flow; also called "laterals" or referred to as "circuit piping."
- H. Low Voltage: As defined in NFPA 70 for circuits and equipment operating at less than 50 V or for remote-control, signaling power-limited circuits.
- I. Mainline Piping: Pressurized pipe that is downstream from point of connection that feeds into remote control valves; also called "mainline" or "main."
- J. Point of Connection: Place where the irrigation system is connected to a water supply; also referred to and abbreviated as "POC."
- K. Water Pressure: Force of water exerted over a given area measured in psi.
- L. Manual Valve: Manually operated device used for controlling water through pipes.
- M. Remote Control Valve: Valve that is activated automatically and regulates water to an irrigation zone; also called "automatic control valve" or "control valve."

1.4 PERFORMANCE REQUIREMENTS

- A. Irrigation zone control shall be automatic operation with controller and automatic remote-control valves.
- B. Location of Sprinklers and Specialties: Design location, as indicated on the Drawings, is approximate. Make minor adjustments necessary to avoid plantings and obstructions such as signs and light standards. Maintain 100 percent irrigation coverage of areas indicated.

1.5 ACTION SUBMITTALS

- A. Product Data: For each type of product indicated. Include rated capacities, operating characteristics, electrical characteristics, and furnished specialties and accessories.
- B. Wiring Diagrams: For power, signal, and control wiring.

1.6 INFORMATIONAL SUBMITTALS

- A. Irrigation Work Plan: Submit three copies of the proposed irrigation plan to the Owner's Representative for review and approval a minimum of 10 working days prior to commencement of work. The plan must follow the specifications and design criteria as indicated.
- B. Record Copy Drawings: During the irrigation system installation, indicate field changes in red line on a printed irrigation plan. This drawing shall be labeled "Record Copy," and shall be made available for review. The status of the record copy drawing must correlate directly with the percentage of work complete described in the Contractor's Pay Request and may be used as a guide when approving payments.
- C. Qualification Data: For qualified Installer.

- D. Zoning Chart: Show each irrigation zone and its control valve.
- E. Controller Timing Schedule: Indicate timing settings for each automatic controller zone.
- F. Field quality-control reports.
- G. Sample Warranty: For special warranty according to procedures in "Warranty" Article.

1.7 CLOSEOUT SUBMITTALS

- A. Operation and Maintenance Data: For sprinklers, controllers, and remote-control valves to include in operation and maintenance manuals. Submit three copies of the following:
 - 1. Catalog product data "cut sheets" of all irrigation products installed.
 - 2. Contractor's name, address, email, and telephone number.
 - 3. The duration of the Guarantee Period.
 - 4. The name and address of the local manufacturer's representative.
 - 5. List and description of routine maintenance procedures, including winterization, start-up, and recommended watering times for each zone.
 - 6. Troubleshooting guide.
- B. Upon completion of the Work of this section and as a condition of its acceptance; submit to the Owner's Representative the following:
 - 1. As-Built Drawings: Submit three prints and one reproducible and/or electronic file of as-built drawings. As-built drawings shall clearly show all original components of the Record Copy and all changes documented in the Record Copy. Main lines, drain valves, valve boxes, and valve markers and other buried equipment shall be positively located by a minimum of two dimensions each from fixed reference points
- C. Controller Reference Chart: Submit one chart for each controller installed on site showing the area covered by each sprinkler zone. The chart shall be a reduced copy of the as-built drawings, color coded to differentiate zone areas, sized to fit the controller door, and hermetically sealed between 20 mil. plastic sheets.
- D. Supplemental Equipment: Submit two key copies for each of the following: quick coupling valves, quick coupling valve lids, valve markers, manual drain valves, valve boxes, and controller cabinets to the Owner's Representative.

1.8 QUALITY ASSURANCE

- A. Installer Qualifications: An employer of workers that include a Professional Class member of the American Society of Irrigation Consultants.
- B. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and application.
- C. Proprietary items shown on the Drawings and specified in this section are shown to establish standards of quality, utility, design, and function. Equivalent units by other manufacturers

(substitutions) will be considered provided they are similar in characteristics. They shall be substituted only if approved by the Owner's Representative.

- D. Weather Limitations: Trenching work shall be performed only when weather conditions do not detrimentally affect the quality of work or negatively degrade surface soils, where runoff and compaction will negatively impact existing surface soils or subgrade. See Section 329113 "Soil Preparation" and Section 329300 "Plants". Apply products during favorable weather conditions according to manufacturer's written instructions and warranty requirements.
- E. All local, municipal, and state laws and rules and regulations governing or relating to any portion of this Work are incorporated into and made a part of these specifications and the Contractor shall carry out their provisions. Information contained within this specification shall not be construed to conflict with the above rules, regulations, or requirements.

1.9 DELIVERY, STORAGE, AND HANDLING

- A. Deliver piping with factory-applied end caps. Maintain end caps through shipping, storage, and handling to prevent pipe-end damage and to prevent entrance of dirt, debris, and moisture.
- B. Store plastic piping protected from direct sunlight. Support to prevent sagging, bending, and from physical damage. Protect from damage due to on-site construction activities.
- C. Store and protect all equipment and appurtenances from adverse weather conditions and physical damage.
- D. Handle all components as directed by the manufacturer's written instructions. Damage from transportation or other handling of materials shall be the responsibility of the Contractor.

1.10 PROJECT CONDITIONS

- A. Interruption of Existing Water Service: Do not interrupt water service to facilities occupied by Owner or others unless permitted under the following conditions and then only after arranging to provide temporary water service according to requirements indicated:
 - 1. Notify Owner's Representative no fewer than two days in advance of proposed interruption of water service.
 - 2. Do not proceed with interruption of water service without Owner's Representative's written permission.
- B. Site Inspection: Inspect the site prior to construction and verify the extent of the work required. Commencement of construction designates acceptance of the site condition.
- C. Verify the locations of all existing utilities, structures, and services before commencing Work. The location of utilities, structures and services shown on the Drawings are approximate. Any discrepancies between the Drawings and the actual field conditions shall be reported to the Owner's Representative immediately.

1.11 WARRANTY

- A. Special Warranty: Installer agrees to repair or replace irrigation piping and equipment that fail in materials or workmanship, within specified warranty period.
 - 1. Failures include, but are not limited to, the following:
 - a. Pipe breaks or leaks, except for defects resulting from abuse or neglect by Owner and including vandalism or natural disasters.
 - b. Faulty performance of controller control wires and valves.
 - c. Deterioration of piping and other irrigation equipment beyond normal user or weathering.
 - d. Trench failure, grade settlement, and soil erosion resulting from defects in irrigation installation.
- B. Warranty Periods: Three year from date of Substantial Completion.
- C. Upon notice from of failure of the irrigation system during the warranty period due to material or workmanship failures; new replacement parts shall be promptly furnished and installed at no cost to the Owner. Damages to property or adjacent site resulting from remedial actions shall be repaired promptly, at no additional cost to the Owner.
 - a. Provide extended warranty for period equal to original warranty period, for replaced materials.

PART 2 - PRODUCTS

2.1 GENERAL

- A. All irrigation materials not specifically described or otherwise incidental to a complete, functioning irrigation system, shall be new and of working condition and approved of prior to installation.

2.2 PIPES, FITTINGS, AND TUBES

- A. Comply with requirements in the piping schedule for applications of pipe, tube, and fitting materials, and for joining methods for specific services, service locations, and pipe sizes.
- B. Mainlines:
 - 1. PVC Pipe: ASTM D1785, PVC 1120 compound, Schedule as indicated on Drawings. Pipe may be belled on one end according to ASTM D2672.
 - 2. PVC Pipe Pressure Rated: ASTM D2241, PVC 1120 compound, Class and SDR as indicated on Drawings. Pipe may be belled on one end according to ASTM D2672.
- C. Lateral Lines:

1. PVC Pipe Pressure Rated: ASTM D2241, PVC 1120 compound, Class and SDR as indicated on Drawings. Pipe may be belled on one end according to ASTM D2672.
- D. Poly-Pipe: Flexible polyethylene swing pipe, UV resistant, sized according to manufacturer's sprinkler head and fitting requirements.
- E. UV Resistant Pipe: PVC pipes at above-ground conditions as indicated on Drawings.
 1. PVC Pipe: ASTM D1784, PVC1120 compound, Type 1, Grade 1, Schedule 40.
- F. Sleeves:
 1. PVC Pipe: ASTM D1785, PVC 1120 compound, Schedule 40.
- G. Miscellaneous Fittings:
 1. Risers and Nipples: ASTM D2464 and ASTM D1785, PVC Schedule 80 with threaded ends.
 2. Fittings for PVC Pipe: ASTM D 2466, Schedule 80.
 3. Fittings for PVC Pipe Pressure Rated: ASTM D2467, Schedule 80.
 - a. PVC Socket Fittings: ASTM 2467, Schedule 80.
 - b. PVC Socket Unions: Construction similar to MSS SP-107, except both headpiece and tailpiece shall be PVC with socket or threaded ends.
 4. Swing Joint: Manufacturer assembled, 3/4 inch or greater size.
 5. Marlex Street Elbow: Black Marlex brand plastic material, 90-degree elbow, male and female pipe thread connections.
 6. Pipe Caps: PVC Schedule 80.

2.3 PIPING JOINING MATERIALS

- A. Solvent Cements for Joining PVC Piping: ASTM D2564, fast setting, high strength, low VOC. Include primer according to ASTM F656.
- B. Teflon Tape for PVC Threaded Ends: PTFE tape, 3 mil minimum thickness.
- C. Sealant for PVC Threaded Ends: Non-PTFE based, soft setting, slow drying, low VOC, lead free, safe for potable water systems, UL classified. Sealant material shall be safe and non-degrading to use with adjoining PVC materials.
 1. Products: Subject to compliance with requirements, provide the following:
 - a. RectorSeal No. 5.
 - b. Approved equal.

2.4 MANUAL VALVES

- A. Gate Valves:

1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:
 - a. American Valve, Inc.
 - b. Crane; a Crane brand.
 - c. Hammond Valve.
 - d. Jenkins Valves; a Crane brand.
 - e. KITZ Corporation.
 - f. Milwaukee Valve Company.
 - g. NIBCO INC.
 - h. Powell Valves.
 - i. WATTS.
 - j. Zurn Industries, LLC.

2. Description:
 - a. Standard: MSS SP-80.
 - b. Class: 125.
 - c. CWP Rating: 200 psig.
 - d. Body Material: ASTM B62, with integral seat and screw-in bonnet.
 - e. Ends: Threaded.
 - f. Stem: Bronze, rising stem and non-rising stem as indicated on Drawings.
 - g. Disc: Solid wedge; bronze.
 - h. Packing: Asbestos free.
 - i. Handwheel: Malleable iron, bronze, or aluminum; rotary handle or cross-handle as indicated on Drawings.

3. Gate Valve Keys: Standard operating keys as provided for drain valves.

B. Angle Valves:

1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:
 - a. Crane; a Crane brand.
 - b. Jenkins Valves; a Crane brand.
 - c. Milwaukee Valve Company.
 - d. NIBCO INC.

2. Description:
 - a. Size: 3/4-inch minimum size.
 - b. Standard: MSS SP-80.
 - c. Class: 125.
 - d. CWP Rating: 200 psig.
 - e. Body Material: Bronze, ASTM B62, with integral seat and screw-in or union bonnet.
 - f. Ends: Threaded.
 - g. Stem: Bronze, rising stem.
 - h. Disc: PTFE.
 - i. Packing: Asbestos free.
 - j. Handwheel: Cross handle; malleable iron, bronze, or aluminum.

3. Drain Valve Keys: Three standard operating keys, 30-inch minimum length, fitted to operate valve.

C. Globe Valves: Bronze, threaded ends, non-rising stem.

1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

- a. American Valve, Inc.
- b. Crane; a Crane brand.
- c. Hammond Valve.
- d. Jenkins Valves; a Crane brand.
- e. KITZ Corporation.
- f. Milwaukee Valve Company.
- g. NIBCO INC.
- h. Powell Valves.
- i. WATTS.
- j. Zurn Industries, LLC.

2. Description:

- a. Standard: MSS SP-80.
- b. Class: 125.
- c. CWP Rating: 200 psig.
- d. Body Material: ASTM B62, with integral seat and screw-in bonnet.
- e. Stem: Bronze.
- f. Disc: Solid wedge; bronze.
- g. Packing: Asbestos free.
- h. Handwheel: Malleable iron, bronze, or aluminum.

2.5 PRESSURE-REDUCING VALVES

A. Water Regulators:

1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:

- a. Apollo Flow Controls; Conbraco Industries, Inc.
- b. Cash Acme, A Division of Reliance Worldwide Corporation.
- c. Honeywell.
- d. WATTS.
- e. Zurn Industries, LLC.

2. Description:

- a. Standard: ASSE 1003.
- b. Body Material: Bronze for NPS 2 and smaller; cast iron with interior lining complying with AWWA C550 or that is FDA approved for NPS 2-1/2 and NPS 3.
- c. Pressure Rating: Initial pressure of 150 psig.

- d. End Connections: Threaded for NPS 2 and smaller; flanged for NPS 2-1/2 and NPS 3.
3. Capacities and Characteristics:
 - a. Size: as required.
 - b. Design Flow Rate: as required.
 - c. Design Inlet Pressure: as required.
 - d. Design Outlet Pressure Setting: as required.

2.6 CONTROL VALVES

A. Remote Control Valves:

1. Products: Subject to compliance with requirements, provide the following:
 - a. Rain Bird Corporation; see drawings for specific model.
2. Description: Molded-plastic body, normally closed, diaphragm type with manual-flow adjustment, and operated by 24-V ac solenoid.

2.7 MISCELLANEOUS VALVES

A. Quick Couplers:

1. Products: Subject to compliance with requirements, provide the following:
 - a. Rain Bird Corporation; 44LRC.
 - b. Approved equal.
2. Description: Factory-fabricated, bronze or brass, two-piece assembly. Include coupler water-seal valve; removable upper body with spring-loaded or weighted, rubber-covered cap; hose swivel with ASME B1.20.7, 3/4-11.5NH threads for garden hose on outlet; and operating key.
3. Locking-Top Option: Vandal-resistant locking feature. Include two matching key(s).

B. In-Line Check Valves:

1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:
 - a. Hunter Industries Incorporated.
 - b. Netafim USA.
 - c. NIBCO INC.
 - d. Aqualine.
 - e. Approved equal.
2. Body: PVC Schedule 80, bronze, or brass body.
3. Size: Line sized.

2.8 AUTOMATIC DRAIN VALVES

- A. Description: Spring-loaded-ball type of corrosion-resistant construction and designed to open for drainage if line pressure drops below 2-1/2 to 3 psig.

2.9 SPRINKLERS

- A. General Requirements: ABS plastic body material, pressure compensating devices, integral check valve body option at low points, designed for uniform coverage over entire spray area indicated at available water pressure. Manufacturer, product, and sprinkler type as indicated on Drawings
- B. Riser Heights: As indicated on Drawings.
- C. Special Requirements: Bodies shall include an integral check valve body option for sprinklers installed at low points of system.

2.10 CONTROLLERS

- A. Products: Subject to compliance with requirements, provide the following:
 - 1. Rain Bird Corporation; ESP-LXD (Two-Wire).
- B. Description:
 - 1. Controller Stations for Remote Control Valves: Each station is variable from approximately 5 to 60 minutes. Include switch for manual or automatic operation of each station.
 - 2. Control Transformer: 24-V secondary, with primary fuse.
 - 3. Timing Device: Adjustable, 24-hour, 14-day clock, with automatic operations to skip operation any day in timer period, to operate every other day, or to operate two or more times daily.
 - a. Manual or Semiautomatic Operation: Allows this mode without disturbing preset automatic operation.
 - b. Nickel-Cadmium Battery and Trickle Charger: Automatically powers timing device during power outages.
 - c. Surge Protection: Metal-oxide-varistor type on each station and primary power.
 - 4. Smart Controllers: Use ET, tested in accordance with IA SWAT Climatological Based Controllers 8th Draft Testing Protocol and compliant with ASHRAE Standard 189.1.
 - 5. Decoders: Model as recommended by controller manufacturer.

2.11 CONTROLLER ENCLOSURES

- A. Exterior Control Enclosures: NEMA 250, Type 4, weatherproof, front-entry with locking cover and two matching keys; include provision for grounding.
 - 1. Products: Subject to compliance with requirements, provide the following:

- a. Rain Bird Corporation; LXMMSS.
 - b. Approved equal.
2. Body Material: Stainless-steel sheet metal.
 3. Mounting: Surface type for wall.

2.12 ELECTRICAL WIRING AND CONNECTORS

- A. Controller Power Wiring: UL 493, Type UF No. 12 AWG minimum solid-copper conductors, multiconductor or single conductor according to controller manufacturer's instructions; jacket colors according to American Society of Irrigation Consultants, ASIC Guideline 102-2004; between power source and controller.
- B. Valve Wires: UL 493, Type UF or PE; No. 14 AWG minimum solid-copper conductors, single conductor; wiring between controller and to electric solenoid of remote-control valves.
 1. Common Wire: "Grounded" conductor wire, white in color.
 2. Control Wire: "Hot" wire, red in color or approved coloring to differentiate between zones and common wire.
 3. Spare Control Wire: "Hot" wire, black in color, for future irrigation zones.
- C. Valve Wires: Two-wire cable, No. 14, or No. 12 AWG, insulated solid-copper conductors; HDPE loose-tube outer jacket with color as recommended by manufacturer; wire type selection according to manufacturer requirements; between controllers and remote-control valves.
- D. Waterproof Wire Connectors: Splicing kit as recommended by wire and controller manufacturer's specifications, consisting of insulating, spring-type connector, or crimped joint and epoxy resin moisture seal; suitable for direct burial, UL approved.

2.13 IRRIGATION EQUIPMENT VALVE BOXES

- A. Valve Boxes:
 1. Manufacturers: Subject to compliance with requirements, provide products by one of the following:
 - a. Carson / Old Castle.
 - b. Orbit Irrigation Products, Inc.
 - c. NDS, Inc.
 - d. Rain Bird Corporation.
 - e. MacLean Highline.
 - f. Approved equal.
 2. Description: Box and overlapping lid with locking mechanism, open bottom, and openings slots for piping; designed for installing flush with grade.
 - a. Size: As required for equipment operation and as indicated on Drawings.
 - b. Shape: As indicated on Drawings.
 - c. Lid: Black color, HDPE with UV inhibitors.

- d. Box Enclosure: Black color, HDPE with UV inhibitors.
 - 1) Lettering: " IRRIGATION."
- B. Polymer-Concrete Valve Boxes:
 1. Products: Subject to compliance with requirements, provide one of the following:
 - a. Armorcast Products Company;
 - b. Christy Concrete Products;
 - c. Hubbell Incorporated (Power Systems Group - Quazite);
 - d. NewBasis;
 - e. Oldcastle Enclosure Solutions;
 2. Description: Box and cover, with open bottom and openings for piping; designed for installing flush with grade.
 - a. Size: As required for valves and service and as indicated on Drawings.
 - b. Shape: Rectangular.
 - c. Sidewall Material: Polymer concrete with lateral and vertical sidewall design loading of 5000 lb. minimum over 10 by 10 inches square.
 - d. Cover Material: Polymer concrete with cover design loading of 5000 lb. minimum over 10 by 10 inches square.
 - 1) Lettering: " IRRIGATION" or approved equal.

2.14 MISCELLANEOUS PRODUCTS

- A. Drainage Backfill: Cleaned gravel or crushed stone, graded from 3/4 inch minimum to 3 inches maximum.
- B. Concrete: Commercial grade concrete mix, compressive strength not less than 3,000 psi at 28 days.
- C. Detectable Warning Tape: Acid- and alkali-resistant, polyethylene film warning tape manufactured for marking and identifying underground utilities, a minimum of 6 inches wide and 4 mils thick, continuously inscribed with a description of the utility, with metallic core encased in a protective jacket for corrosion protection, detectable by metal detector when tape is buried up to 30 inches deep; colored according to APWA "Uniform Color Code".
- D. Tracer Wire: 12-gauge (AWG) stranded solid copper or copper clad steel reinforced, 45-mil thickness high molecular weight polyethylene insulation; detectable by metal detector when wire is buried up to 30 inches deep, UL rated for 140 degrees F; colored according to APWA "Uniform Color Code".
- E. Filter Fabric: Nonwoven geotextile, polypropylene, or polyester fabric, 3 oz./sq. yd. minimum, composed of fibers formed into a stable network so that fibers retain their relative position. Fabric shall be inert to biological degradation and resist naturally encountered chemicals, alkalis, and acids.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Irrigation pipe layout and equipment as indicated on Drawings may be represented schematically and require field adjustment. Do not install any irrigation equipment or pipes if presented with obstructions, grade differences, access issues, or safety problems. Contact Owner's Representative with any issues anticipated or encountered immediately.
- B. Prior to conducting any work of the section, inspect all existing conditions and previously installed components and verify they are complete, installed, and functional for the correct installation and operation of the irrigation system, including but not limited to identifying water source, electrical source, and installed pipe sleeves.
- C. Verify all components and products to be installed and shall be compatible together for the proper operation and durability of the irrigation system.

3.2 EARTHWORK

- A. Excavating, trenching, and backfilling are specified in Section 312000 "Earth Moving."
- B. Install warning tape in center of trench above pressure piping under pavement only, 12 inches below finished grades, except 6 inches below subgrade under pavement and slabs, and above tracer wire.
- C. Install tracer wire in center of trench above all pressure piping and according to manufacturer instructions.
 - 1. Planting Areas: Install tracer wire 1 to 2 inches above the upper-most pressure pipe or non-pressure pipe within trench.
 - 2. Paved Areas: Install tracer wire directly above "pipe zone" backfill.
- D. Drain Pockets: Excavate and backfill with drain rock material as indicated on Drawings, to 12 inches minimum below grade or as indicated on Drawings.
- E. Provide minimum cover over top of underground piping as indicated on Drawings

3.3 PREPARATION

- A. Set stakes to identify locations of proposed irrigation system. Obtain Owner's Representative's approval before excavation.
- B. Installation of any irrigation piping or equipment that connects to potable water sources shall prevent cross connection in accordance with pertinent local jurisdictional code and state law. Refer to "Backflow Prevention Device Installation" Article.
- C. Maintain the performance and proper operation of all existing components including the existing irrigation system, water utilities, electrical utilities, for any proposed irrigation work. The

proposed irrigation equipment shall be functionally integrated into the existing equipment as to function as one complete system.

3.4 PIPING INSTALLATION

- A. Location and Arrangement: Drawings indicate schematic location and arrangement of piping systems. Install piping as indicated unless deviations are approved on Coordination Drawings.
- B. Install piping at minimum uniform slope of 0.5 percent down toward drain valves.
- C. Install piping free of sags and bends.
- D. Install groups of pipes parallel to each other, spaced to permit valve servicing.
- E. Install fittings for changes in direction and branch connections.
- F. Install unions adjacent to valves and to final connections to other components with NPS 2 or smaller pipe connection.
- G. Install flanges adjacent to valves and to final connections to other components with NPS 2-1/2 or larger pipe connection.
- H. Install underground thermoplastic piping according to ASTM D2774.
- I. Install expansion loops in control-valve boxes for plastic piping.
- J. Lay piping on solid subbase, uniformly sloped without humps, depressions, sharp objects, or debris.
- K. Install PVC piping in dry weather when temperature is above 40 deg F. Allow joints to cure at least 24 hours at temperatures above 40 deg F before testing.
- L. Install water regulators with shutoff valve and strainer on inlet and pressure gage on outlet. Install shutoff valve on outlet. Install aboveground or in control-valve boxes.
- M. Install piping in sleeves under parking lots, roadways, and sidewalks as indicated on Drawings.
- N. Install sleeves with socket fittings, and solvent-cemented joints.

3.5 PIPE PULLING

- A. Installation of pipe and wires by means of vibratory plow may be used as an alternate to standard trenching methods if approved by the Owner's Representative.
- B. Vibratory pipe pulling shall only be allowed on 3/4 inch and 1-inch diameter piping only.
- C. Solvent weld joints shall be thoroughly cured prior to pipe pulling.

- D. Ensure, by means of an open pit or trench at the beginning, middle, and the end of pull; that pipe and wire is installed at the specified burial depths throughout the entire length of the pull. Burial depths shall be the same as specified for trenching.
- E. Allow a minimum of five chain links between plow blade and pulling grip/bullet.
- F. Pulling grip/bullet shall be a minimum of two-inch in diameter greater than the combined diameters of pipe joints and wire to be pulled.
- G. Wire pulling shall only occur with proper wire blade feed attachment.

3.6 JOINT CONSTRUCTION

- A. Ream ends of pipes and tubes and remove burrs. Bevel plain ends of steel pipe.
- B. Remove scale, slag, dirt, and debris from inside and outside of pipe and fittings before assembly.
- C. Threaded Joints: Thread pipe with tapered pipe threads according to ASME B1.20.1. Cut threads full and clean using sharp dies. Ream threaded pipe ends to remove burrs and restore full ID. Join pipe fittings and valves as follows:
 - 1. Apply appropriate tape or thread compound to external pipe threads unless dry seal threading is specified.
 - 2. Damaged Threads: Do not use pipe or pipe fittings with threads that are corroded or damaged. Do not use pipe sections that have cracked or open welds. Do not use solvent cement on threaded joints.
- D. PVC Piping Solvent-Cemented Joints: Clean and dry joining surfaces. Join pipe and fittings according to the following:
 - 1. Comply with ASTM F402 for safe-handling practice of cleaners, primers, and solvent cements.
 - 2. PVC Pressure Piping: Join schedule number, ASTM D1785, PVC pipe and PVC socket fittings according to ASTM D2672. Join other-than-schedule-number PVC pipe and socket fittings according to ASTM D2855.
 - 3. PVC Nonpressure Piping: Join according to ASTM D2855.
- E. Soil contaminated by solvents, pipe shavings, or materials that cannot be easily separated shall be excavated out and properly removed from site.

3.7 VALVE INSTALLATION

- A. General Placement: Equipment and valve box locations shall install in a manner as to not interrupt plant massing or groups, hedge lines, or otherwise alter the character of the proposed plantings.
 - 1. Place valves and valve boxes in low growing ground cover areas offset from adjacent paving by a minimum of two times the specified ground cover spacing unless indicated otherwise.

2. In areas where valves or valve boxes may be readily visible, verify location with Owner's Representative prior to installation.
 3. Provide valve box supports, filter fabric, and drainage backfill as indicated on Drawings.
- B. Underground Curb Valves: Install in curb-valve casings with tops flush with grade.
- C. Throttling Valves: Install in underground piping in boxes for remote control valves.
- D. Remote Control Valves: Install in valve boxes as indicated on Drawings and according to manufacturer instructions.
- E. Drain Valves: Install in valve boxes as indicated on Drawings and according to manufacturer instructions. Slope pipe leading to drain valve 1 percent minimum.
- F. Quick Coupling Valves: Install in valve boxes as indicated on Drawings and according to manufacturer instructions.
- G. Wiring: Install required wiring and decoders to match existing system. Provide grounding according to ASIC guidelines.

3.8 SYSTEM FLUSHING AND PRESSURE TEST

- A. System Flushing: After piping, risers, backflow prevention devices and valves are installed but prior to irrigation head installation; flush dirt and debris from piping under full water head.
1. Maintain flushing for five minutes or until water flows clearly.
 2. Cap risers immediately after flushing.
- B. Hydrostatic Test: Perform hydrostatic pressure test after system flushing and after piping, risers, backflow prevention devices and valves are installed but prior to backfilling.
1. Mainlines: Purge all main lines of air and test with static water pressure of at least 125 psi for 60 minutes. Test with one pressure gauge installed on the line. Lines showing loss of pressure exceeding 5 psi at the end of the specified test period will be rejected. Correct rejected installations and retest for leaks.
 2. Lateral Lines: Purge all lateral lines of air and test under operating line pressures with risers capped and drain valves closed. Maintain operating line pressures for 30 minutes through open valves and pressure regulating devices. Lines showing leaks when visually inspected at the end of the specified test periods will be rejected. Correct and retest lateral line installations that have been rejected
 3. Do not backfill trenches until the piping has been inspected and tested. Obtain Owner's Representative's approval prior to backfilling.

3.9 ELECTRICAL WIRING INSTALLATION

- A. Valve wire, General: Install common wire and valve wires to remote control valves. Provide consistent wire jacket colors throughout site system installation; colors shall be typical of irrigation systems.
 - 1. Provide conductors of size not smaller than recommended by controller manufacturer.
 - 2. Bundle wiring at 15-foot intervals, or as necessary, with standard electrical cable ties.
 - 3. Snake wire in trench to provide additional slack along the wire run.
 - 4. Install valve wires to remote control valves as according to manufacturer instructions.
- B. Run valve wires from controller to remote control valves in electrical conduit, from the bottom of controller to outside of enclosure as indicated on Drawings in accordance with state and local requirements.
- C. Wiring in Planting Area Trenches: Install valve wires in same trench as irrigation piping and at least two inches below the bottom-most irrigation pipe. When necessary to run wire separate from the irrigation pipe, place the wire under detectable warning tape.
- D. Wiring Under Paving: Install all valve wires in separate sleeve under paved areas within the same trench as irrigation piping, where feasible. In locations that require a separate trench for wiring; provide a minimum cover of 18 inches to top of sleeve.
- E. Splices: Utilize waterproof splice connectors as installed according to manufacturer's instructions. Provide coils of at least 30 inches minimum length, or as indicated. Splices not occurring within remote control valve boxes shall be installed in a separate valve box.
- F. Spare Wires: Run additional valve wires for three future zones from controller to furthest remote-control valve at each leg of mainline. Provide 18 inches of looped valve wire at each end and label wiring on each side "Spare Wire." Valve wires to remain unconnected in controller enclosure and neatly bundled in valve box.

3.10 SPRINKLER INSTALLATION

- A. Install sprinklers after hydrostatic test is completed.
- B. Install sprinklers according to manufacturer's instructions on flexible risers with swing-joint type as indicated on Drawings.
- C. Install sprinklers according to the dimensions indicated on Drawings.
- D. Locate part-circle sprinklers to maintain a minimum distance of 3 inches from walls and 1 inch from other boundaries unless otherwise indicated.
- E. Install sprinklers with internal check valve at low elevation points of each zone to prevent low head drainage issues. Install
- F. Install inline check valves on lateral pipes indicated on Drawings.

- G. Sprinklers located on slopes which are less than three percent shall be installed plumb. Slopes greater than three percent shall be installed at an angle midway between plumb and perpendicular to the slope.

3.11 CONNECTIONS

- A. Comply with requirements for piping specified in for water supply from exterior water service piping, water meters, protective enclosures, and backflow preventers. Drawings indicate general arrangement of piping, fittings, and specialties.
- B. Install piping adjacent to equipment, valves, and devices to allow service and maintenance.

3.12 IDENTIFICATION

- A. Identify system components.
- B. Equipment Nameplates and Signs: Install engraved plastic-laminate equipment nameplates and signs on each automatic controller.
 - 1. Text: In addition to identifying unit, distinguish between multiple units, inform operator of operational requirements, indicate safety and emergency precautions, and warn of hazards and improper operations.
- C. Detectable Warning Tapes and Tracer Wire: Arrange for installation of continuous, underground, detectable warning tapes and tracer wire over underground piping during backfilling of trenches. See Section 312000 "Earth Moving."

3.13 FIELD QUALITY CONTROL TESTING

- A. Manufacturer's Field Service: Engage a factory-authorized service representative to inspect, test, and adjust components, assemblies, and equipment installations, including connections.
- B. Perform tests and inspections in the presence of the Owner's Representative and after all irrigation equipment is installed.
 - 1. Manufacturer's Field Service: Engage a factory-authorized service representative to inspect components, assemblies, and equipment installations, including connections, and to assist in testing.
- C. Tests and Inspections:
 - 1. Leak Test: After installation, charge system and test for leaks. Repair leaks and retest until no leaks exist.
 - 2. Operational Test: After electrical circuitry has been energized, operate controllers and remote-control valves to confirm proper system operation.
 - 3. Test and adjust controls and safeties. Replace damaged and malfunctioning controls and equipment.

- D. Any irrigation product will be considered defective if it does not pass tests and inspections.
- E. Prepare test and inspection reports.

3.14 STARTUP SERVICE

- A. Perform startup service.
 - 1. Complete installation and startup check according to manufacturer's written instructions.
 - 2. Verify that controllers are installed and connected according to the Contract Documents.
 - 3. Verify that electrical wiring installation and data communications complies with manufacturer's submittal.

3.15 SYSTEM PROGRAMMING

- A. General: Irrigation zones shall be programmed to provide deep but infrequent irrigation to promote deeply rooted planting growth. System runtimes shall factor regional annual precipitation rates including local historical ET rates; plant type's (zone) seasonal water demand for the region; plant maturation requirements; solar exposure; soil conditions; and topography. Program system runtimes to not cause runoff and not interrupt activities of the site.
- B. Programming: Calculate three irrigation programs for spring to early summer; summer; and late summer to early fall.

3.16 ADJUSTING

- A. Adjust settings of controller as necessary to meet irrigation requirements for plant health and site requirements.
- B. Adjust remote control valves to provide flow rate at rated operating pressure required for each sprinkler circuit.
- C. Adjust sprinklers and devices, except those intended to be mounted aboveground, so they will be flush with, or not more than 1/2 inch above, finish grade.
- D. Modify spray pattern of nozzles to reduce throw of water onto buildings, structures, vehicles, and paved surfaces. Monitor and re-adjust system operation until components operate continually as specified.

3.17 CLEANUP

Upon completion, wash clean all surfaces impacted by irrigation construction. Coordinate with Owner's Representative prior to cleaning.

- A. Repair all grade ruts caused by irrigation system testing.

- B. Repair any planting soils or subgrade that has been compacted, disturbed, or degraded during irrigation system installation.
- C. Remove and properly dispose of excess backfill materials, packaging, and other material brought to the site.

3.18 MAINTENANCE

- A. General: Provide a minimum one-year maintenance period unless otherwise indicated on Contract Documents. The maintenance period shall start on the following date of written acceptance of system installation.
 - 1. Maintain a log of visits with activities performed.
- B. After two weeks of operation, flush lines and remove particulates from system. Adjust and clean all filters or screens twice a month.
- C. Once a month, review site conditions and assess for signs of over or under watering. Inspect plant growth and vigor; adjust watering schedule, as necessary.
 - 1. Inspect controller for proper functioning. Verify zone timing settings at each inspection visit.
 - 2. Repair and adjust system throughout Warranty Period.
- D. Perform seasonal winterization and system start-up services. Demonstrate start-up and winterization, including manual system shut off valve locations, in the presence of the Owner or their personnel representatives.

3.19 DEMONSTRATION

- A. Train Owner's maintenance personnel to adjust, operate, and maintain remote control valves and controllers.
- B. Operate the system in the presence of the Owner's Representative to demonstrate satisfactory performance and coverage.

END OF SECTION 328400

SECTION 329113 - SOIL PREPARATION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes planting soils specified by performance requirements.
- B. Related Requirements:
 - 1. Section 311000 "Site Clearing" for topsoil stripping and stockpiling.
 - 2. Section 329200 "Turf and Grasses" for placing planting soil for turf and grasses.
 - 3. Section 329300 "Plants" for placing planting soil for plantings, fertilizers, including biochar and mycorrhizae in backfill soil.
 - 4. Section 329310 "Landscape Maintenance"

1.3 DEFINITIONS

- A. AAPFCO: Association of American Plant Food Control Officials.
- B. Amendment: Physical, chemical, or biological material additive that adjusts the physical and/or chemical structure of base soil. Materials may include sand, compost, fertilizer, biological additives, and pH modifiers.
- C. Backfill: The earth used to replace or the act of replacing earth in an excavation. This can be amended, or unamended soil as indicated.
- D. CEC: Cation exchange capacity.
- E. Coefficient of Uniformity: Numerical expression of distribution of dry weight soil particles in a sample, passed through sieves, that is the ratio between particles that are 60 percent finer and 10 percent finer within the sample (expressed as D60/D10).
- F. Compost: The product resulting from the controlled biological decomposition of organic material that has been sanitized through the generation of heat and stabilized to the point that it is beneficial to plant growth.
- G. Duff Layer: A surface layer of soil, typical of forested areas, that is composed of mostly decayed leaves, twigs, and detritus.
- H. Field Capacity: The amount of water in soil after excess water has drained away and ceased two to three days after a wetted event.

- I. Friable: Crumbly texture of soil where larger clumps of soil can be broken into smaller, crumbly pieces by light rubbing.
- J. Imported Soil: Soil that is transported to Project site for use.
- K. Layered Soil Assembly: A designed series of planting soils, layered on each other, that together produce an environment for plant growth.
- L. Manufactured Soil: Soil produced by blending soils, sand, stabilized organic soil amendments, and other materials to produce planting soil.
- M. NAPT: North American Proficiency Testing Program. An SSSA program to assist soil-, plant-, and water-testing laboratories through interlaboratory sample exchanges and statistical evaluation of analytical data.
- N. Organic Matter: The total of organic materials in soil exclusive of undecayed plant and animal tissues, their partial decomposition products, and the soil biomass; also called "humus" or "soil organic matter."
- O. Planting Area: Areas on site to be planted or seeded within planting soil.
- P. Planting Soil: Existing, on-site soil; imported soil; or manufactured soil that has been modified as specified with soil amendments and perhaps fertilizers to produce a soil mixture best for plant growth.
- Q. RCRA Metals: Hazardous metals identified by the EPA under the Resource Conservation and Recovery Act.
- R. Saturated Soils: Water that fills the entirety of soil pores between soil particles.
- S. Scarification/Scarify: Alleviation of compaction and consolidation of soil by any number of methods including loosening, turning, fracturing, or roughening through mechanized or manual means.
- T. SSSA: Soil Science Society of America.
- U. Subgrade: Surface or elevation of subsoil remaining after excavation is complete, or the top surface of a fill or backfill before planting soil is placed.
- V. Subsoil: Soil beneath the level of subgrade; soil beneath the topsoil layers of a naturally occurring soil profile, typified by less than 1 percent organic matter and few soil organisms.
- W. Surface Soil: Soil that is present at the top layer of the existing soil profile. In undisturbed areas, surface soil is typically called "topsoil"; but in disturbed areas such as urban environments, the surface soil can be subsoil.
- X. Stormwater Planting Soil: Planting medium used in a vegetated stormwater facility that is suitable for plant growth and vigor manufactured from existing on-site topsoil, imported topsoil, blended soil mix, or a combination thereof that includes necessary amendments and other soil additions further defined in this specification.

- Y. Till: Scarification method, often with mechanized equipment, that turns, digs, or stirs soil to alleviate compaction and mix soil.
- Z. USCC: U.S. Composting Council.

1.4 PREINSTALLATION MEETINGS

- A. Preinstallation Conference: Conduct conference at Project site.

1.5 ACTION SUBMITTALS

- A. Product Data: For each type of product.
 - 1. Include recommendations for application and use.
 - 2. Include test data substantiating that products comply with requirements.
 - 3. Include sieve analyses for aggregate materials.
 - 4. Material Certificates: For each type of soil amendment and fertilizer before delivery to the site, according to the following:
 - a. Manufacturer's qualified testing agency's certified analysis of standard products.
 - b. Analysis of fertilizers, by a qualified testing agency, made according to AAPFCO methods for testing and labeling and according to AAPFCO's SUIP #25.
 - c. Analysis of nonstandard materials, by a qualified testing agency, made according to SSSA methods, where applicable.
- B. Samples: For each bulk-supplied material, 1-quart volume of each in sealed containers labeled with content, source, and date obtained. Each Sample shall be typical of the lot of material to be furnished; provide an accurate representation of composition, color, and texture.

1.6 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For each testing agency.
- B. Preconstruction Test Reports: For preconstruction soil analyses specified in "Preconstruction Testing" Article.
- C. Field quality-control reports.
- D. Soil Work Plan: 90 days prior to planting soil installation, submit a written statement that describes the soil design method(s) that will be utilized including the following:
 - 1. Soil testing locations and timeline.
 - 2. Ability to use existing surface soils for final planting soil design and location of surface soil stockpiles.
 - 3. Location and source of amendments.
 - 4. Soil blending material operations needed to create planting soil including potential equipment desired to use.
 - 5. Responsibility of subgrade preparation.

6. Weed removal and abatement process as required in Section 311000 Site Clearing.

1.7 QUALITY ASSURANCE

- A. Testing Agency Qualifications: An independent, state-operated, or university-operated laboratory; experienced in soil science, soil testing, and plant nutrition; with the experience and capability to conduct the testing indicated; and that specializes in types of tests to be performed.
 1. Laboratories: Subject to compliance with requirements, provide testing by one of the following:
 - a. Soil and Plant Laboratory, Inc.; www.soilandplantlaboratory.com.
 - b. Western Agricultural Laboratories; www.al-labs-west.com.
 - c. Approved equal.

1.8 PRECONSTRUCTION TESTING

- A. Preconstruction Soil Analyses: For each unamended soil type, perform testing on soil samples and furnish soil analysis and a written report containing soil-amendment and fertilizer recommendations by a qualified testing agency performing the testing according to "Soil-Sampling Requirements" and "Testing Requirements" articles.
 1. Have testing agency identify and label samples and test reports according to sample collection and labeling requirements.

1.9 SOIL-SAMPLING REQUIREMENTS

- A. General: Extract soil samples according to requirements in this article.
- B. Sample Collection and Labeling: Have samples taken and labeled by soil scientist (CPSS) certified by SSSA soil classifier (CPSC) certified by SSSA soil scientist (RPSS) registered by the National Society of Consulting Soil Scientists or state-certified, -licensed, or -registered soil scientist under the direction of the testing agency.
 1. Number and Location of Samples: Minimum of three representative soil samples where directed by Owner's Representative for each soil to be used or amended for landscaping purposes.
 2. Procedures and Depth of Samples: According to USDA-NRCS's "Field Book for Describing and Sampling Soils."
 3. Division of Samples: Split each sample into two, equal parts. Send half to the testing agency and half to Owner for its records.
 4. Labeling: Label each sample with the date, location keyed to a site plan or other location system, visible soil condition, and sampling depth.

1.10 TESTING REQUIREMENTS

- A. General: Perform tests on soil samples according to requirements in this article.

B. Physical Testing:

1. Soil Texture: Soil-particle, size-distribution analysis by one of the following methods according to SSSA's "Methods of Soil Analysis - Part 1-Physical and Mineralogical Methods":
 - a. Sieving Method: Report sand-gradation percentages for very coarse, coarse, medium, fine, and very fine sand; and fragment-gradation (gravel) percentages for fine, medium, and coarse fragments; according to USDA sand and fragment sizes.
 - b. Hydrometer Method: Report percentages of sand, silt, and clay.
2. Bulk Density: Analysis according to core method of SSSA's "Methods of Soil Analysis - Part 1-Physical and Mineralogical Methods."
3. Total Porosity: Calculate using particle density and bulk density according to SSSA's "Methods of Soil Analysis - Part 1-Physical and Mineralogical Methods."
4. Water Retention: According to SSSA's "Methods of Soil Analysis - Part 1-Physical and Mineralogical Methods."
5. Saturated Hydraulic Conductivity: According to SSSA's "Methods of Soil Analysis - Part 1-Physical and Mineralogical Methods"; at 85 percent compaction according to ASTM D698 (Standard Proctor).

C. Chemical Testing:

1. CEC: Analysis by sodium saturation at pH 7 according to SSSA's "Methods of Soil Analysis - Part 3- Chemical Methods."
2. Clay Mineralogy: Analysis and estimated percentage of expandable clay minerals using CEC by ammonium saturation at pH 7 according to SSSA's "Methods of Soil Analysis - Part 1-Physical and Mineralogical Methods."
3. Metals Hazardous to Human Health: Test for presence and quantities of RCRA metals including aluminum, arsenic, barium, copper, cadmium, chromium, cobalt, lead, lithium, and vanadium. If RCRA metals are present, include recommendations for corrective action.
4. Phytotoxicity: Test for plant-available concentrations of phytotoxic minerals including aluminum, arsenic, barium, cadmium, chlorides, chromium, cobalt, copper, lead, lithium, mercury, nickel, selenium, silver, sodium, strontium, tin, titanium, vanadium, and zinc.

D. Fertility Testing: Soil fertility analysis according to standard laboratory protocol of SSSA NAPT WERA-103, including the following:

1. Percentage of organic matter.
2. CEC, calcium percent of CEC, and magnesium percent of CEC.
3. Soil reaction (acidity/alkalinity pH value).
4. Buffered acidity or alkalinity.
5. Nitrogen ppm.
6. Phosphorous ppm.
7. Potassium ppm.
8. Manganese ppm.
9. Manganese-availability ppm.
10. Zinc ppm.
11. Zinc availability ppm.
12. Copper ppm.
13. Sodium ppm and sodium absorption ratio.

14. Soluble-salts ppm.
 15. Presence and quantities of problem materials including salts and metals cited in the Standard protocol. If such problem materials are present, provide additional recommendations for corrective action.
 16. Other deleterious materials, including their characteristics and content of each.
- E. Organic-Matter Content: Analysis using loss-by-ignition method according to SSSA's "Methods of Soil Analysis - Part 3-Chemical Methods."
- F. Recommendations: Based on the test results, state recommendations for soil treatments and soil amendments to be incorporated to produce satisfactory, riparian, planting soil suitable for healthy, viable plants indicated without impacting adjacent waterways. Include, at a minimum, recommendations for nitrogen, phosphorous, and potassium fertilization, and for micronutrients.
1. Fertilizers and Soil Amendment Rates: State recommendations in weight per 1000 sq. ft. for 6-inch depth of soil.
 2. Soil Reaction: State the recommended liming rates for raising pH or sulfur for lowering pH according to the buffered acidity or buffered alkalinity in weight per 1000 sq. ft. for 6-inch depth of soil.

1.11 DELIVERY, STORAGE, AND HANDLING

- A. Packaged Materials: Deliver packaged materials in original, unopened containers showing weight, certified analysis, name and address of manufacturer, and compliance with state and Federal laws if applicable.
- B. Bulk Materials:
1. Do not dump or store bulk materials near structures, utilities, walkways, and pavements, or on existing turf areas or plants.
 2. Provide erosion-control measures to prevent erosion or displacement of bulk materials, discharge of soil-bearing water runoff, and airborne dust reaching adjacent properties, water conveyance systems, or walkways.
 3. Do not move or handle materials when they are wet or frozen.
 4. Accompany each delivery of bulk fertilizers and soil amendments with appropriate certificates.

PART 2 - PRODUCTS

2.1 PLANTING SOILS, GENERAL

- A. Planting soils shall only be created from on-site, existing in place, on-site stockpiled surface soils with the addition of imported inorganic soil amendments, organic soil amendments, and fertilizers as necessary that meets the requirements in "Planting Soils Specified by Composition" Article.

2.2 PLANTING SOILS SPECIFIED BY COMPOSITION

- A. General: Soil amendments, fertilizers, and rates of application specified in this article are guidelines that may need revision based on testing laboratory's recommendations after preconstruction soil analyses are performed.
- B. Planting-Soil Type 1: Existing, on-site surface soil, with the duff layer, if any, retained; and stockpiled on-site; modified to produce viable planting soil. Blend existing, on-site surface soil with the following soil amendments and fertilizers in the following quantities to produce planting soil:
 - 1. Ratio of Loose Compost to Soil: as indicated in soil test report by volume.
 - 2. Weight of Lime: as indicated in soil test report per 1000 sq. ft. per 6 inches of soil depth.
 - 3. Weight of Sulfur: as indicated in soil test report per 1000 sq. ft. per 6 inches of soil depth.
 - 4. Weight of Agricultural Gypsum: as indicated in soil test report per 1000 sq. ft. per 6 inches of soil depth.
 - 5. Weight of Superphosphate: as indicated in soil test report per 1000 sq. ft. per 6 inches of soil depth.
 - 6. Weight of Commercial Fertilizer: as indicated in soil test report per 1000 sq. ft. per 6 inches of soil depth.
 - 7. Weight of Slow-Release Fertilizer: as indicated in soil test report per 1000 sq. ft. per 6 inches of soil depth.

2.3 INORGANIC SOIL AMENDMENTS

- A. Lime: ASTM C602, agricultural liming material containing a minimum of 80 percent calcium carbonate equivalent and as follows:
 - 1. Class: O, with a minimum of 95 percent passing through No. 8 sieve and a minimum of 55 percent passing through a No. 60 sieve.
 - 2. Form: Provide lime in form of ground dolomitic limestone.
- B. Sulfur: Granular, biodegradable, and containing a minimum of 90 percent elemental sulfur, with a minimum of 99 percent passing through a No. 6 sieve and a maximum of 10 percent passing through a No. 40 sieve.
- C. Iron Sulfate: Granulated ferrous sulfate containing a minimum of 20 percent iron and 10 percent sulfur.
- D. Agricultural Gypsum: Minimum 90 percent calcium sulfate, finely ground with 90 percent passing through a No. 50 sieve.
- E. Sand: Clean, washed, coarse, and sharp; free of limestone, shale and slate particles; natural or manufactured and free of toxic materials; ASTM C33/C33M; with 100 percent passing a 3/8 inch sieve and zero to 5 percent passing a No. 200 Sieve.

2.4 ORGANIC SOIL AMENDMENTS

- A. Compost: Well-composted, stable, and weed-free organic matter produced by composting feedstock, and bearing USCC's "Seal of Testing Assurance," and as follows:
 - 1. Limited to leaves.
 - 2. Reaction: pH of 5.5 to 8.
 - 3. Soluble-Salt Concentration: Less than 4 dS/m.
 - 4. Primary Plant Nutrients: Reported as percent as-is or dry weight for nitrogen, phosphorus, potassium, calcium, and magnesium.
 - 5. Moisture Content: 35 to 55 percent by weight.
 - 6. Particle Size: Minimum of 98 percent passing through a 3/4-inch sieve.
 - 7. Organic-Matter Content: 30 to 65 percent of dry weight.
 - 8. Stability: Respirometry, equal to or less than 8 CO₂-C per g OM per day.
 - 9. Maturity: Bioassay, minimum 80 percent seed emergence and seedling vigor.
 - 10. Stability: Stable.
 - 11. Inert materials and Foreign Debris: Less than 2 percent by dry weight.
 - 12. Ratio of Carbon to Nitrogen: 25:1 minimum.
 - 13. Meet or exceed US EPA Class A standard, 40 CFR Section 503.13.
 - 14. Meet or exceed US EPA Class A standard, 40 CFR Section 503.32.

2.5 FERTILIZERS

- A. Superphosphate: Commercial, phosphate mixture, soluble; a minimum of 20 percent available phosphoric acid.
- B. Commercial Fertilizer: Commercial-grade complete fertilizer of neutral character, consisting of fast- and slow-release nitrogen, 50 percent derived from natural organic sources of urea formaldehyde, phosphorous, and potassium in the following composition:
 - 1. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified testing agency.
- C. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:
 - 1. Composition: Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified testing agency.
- D. Chelated Iron: Commercial-grade FeEDDHA for dicots and woody plants, and commercial-grade FeDTPA for ornamental grasses and monocots.

PART 3 - EXECUTION

3.1 GENERAL

- A. Place planting soil and fertilizers according to requirements in other Specification Sections. Placing and mixing process may vary based up planting soil approach utilized.

- B. Verify that no foreign or deleterious material or liquid such as paint, paint washout, concrete slurry, concrete layers or chunks, cement, plaster, oils, gasoline, diesel fuel, paint thinner, turpentine, tar, roofing compound, or acid has been deposited in planting soil.
- C. Proceed with placement only after unsatisfactory conditions have been corrected.
- D. All materials removed from prepared soil areas shall be legally disposed of from Owner's property.

3.2 PREPARATION OF UNAMENDED, ON-SITE SOIL BEFORE AMENDING

- A. Excavation: Excavate soil from designated area(s) to a depth of 6 inches and stockpile until amended.
- B. Unacceptable Materials: Clean soil of concrete slurry, concrete layers or chunks, cement, plaster, building debris, oils, gasoline, diesel fuel, paint thinner, turpentine, tar, roofing compound, acid, and other extraneous materials that are harmful to plant growth.
- C. Unsuitable Materials: Clean soil to contain a combined maximum of 8 percent by dry weight of stones, roots, plants, sod, clay lumps, and pockets of coarse sand.

3.3 PLACING AND MIXING PLANTING SOIL OVER EXPOSED SUBGRADE

- A. General: Apply and mix unamended soil with amendments on-site to produce required planting soil. Do not apply materials, scarify, or till if existing soil or subgrade is frozen, muddy, saturated, or excessively wet.
- B. Subgrade Preparation: Scarify subgrade to a minimum depth of 6 inches. Remove organic materials such as sticks, and roots larger than 2 inches in any dimension. Remove all construction debris, trash, rubbish, and other extraneous matter of any dimension from site.
 - 1. Apply, add soil amendments, and mix approximately half the thickness of unamended soil over prepared, loosened subgrade according to "Mixing" Paragraph below. Mix thoroughly into top 4 inches of subgrade. Spread remainder of planting soil.
- C. Mixing: Spread unamended soil to total depth of 6 inches, but not less than required to meet finish grades after mixing with amendments and natural settlement.
 - 1. Amendments: Apply soil amendments, except compost, and fertilizer, if required, evenly on surface, and thoroughly blend them with unamended soil to produce planting soil.
 - a. Mix lime and sulfur with dry soil before mixing fertilizer.
 - b. Mix fertilizer with planting soil no more than seven days before planting.
 - 2. Lifts: Apply and mix unamended soil and amendments in lifts not exceeding 8 inches in loose depth for material compacted by compaction equipment, and not more than 6 inches in loose depth for material compacted by hand-operated tampers.

- D. **Compaction:** Compact each blended lift of planting soil to 75 to 82 percent of maximum Standard Proctor density according to ASTM D698.
- E. **Finish Grading:** Grade planting soil to a smooth, uniform surface plane with loose, uniformly fine texture. Roll and rake, remove ridges, and fill depressions to meet finish grades.

3.4 BLENDING PLANTING SOIL IN PLACE

- A. **General:** Mix amendments with in-place, unamended soil to produce required planting soil. Do not apply materials, scarify, or till if existing soil or subgrade is frozen, muddy, saturated, or excessively wet.
- B. **Preparation:** Scarify unamended, existing soil in planting areas to a minimum depth of 12 inches. Depth includes scarified layer below planting soil profile. Remove organic materials such as sticks and roots larger than 2 inches in any dimension. Remove all construction debris, trash, rubbish, and other extraneous matter of any dimension from site.
- C. **Mixing:** Apply soil amendments, except compost, and fertilizer, if required, evenly on surface, and thoroughly blend them into full depth of unamended, in-place soil to produce planting soil.
 - 1. Mix lime and sulfur with dry soil before mixing fertilizer.
 - 2. Mix fertilizer with planting soil no more than seven days before planting.
- D. **Compaction:** Compact blended planting soil to 75 to 82 percent of maximum Standard Proctor density according to ASTM D698.
- E. **Finish Grading:** Grade planting soil to a smooth, uniform surface plane with loose, uniformly fine texture. Roll and rake, remove ridges, and fill depressions to meet finish grades.

3.5 APPLYING COMPOST TO PLANTING SOIL

- A. **Application:** Apply compost component of planting-soil mix to surface of in-place planting soil. Do not apply materials or till if existing soil or subgrade is frozen, muddy, saturated, or excessively wet.
- B. **Blending:** Till compost into surface of in-place planting soil and thoroughly incorporate to a depth of 6 inches.
- C. **Planting holes:** Add Compost to existing soil of planting holes if the soil is cobbly or sandy.
- D. **Finish Grading:** Grade surface to a smooth, uniform surface plane with loose, uniformly fine texture. Roll and rake, remove ridges, and fill depressions to meet finish grades.

3.6 FIELD QUALITY CONTROL

- A. **Testing Agency:** Engage a qualified testing agency to perform tests and inspections.
- B. **Perform the following tests:**

1. Compaction: Test planting-soil compaction after placing each lift and at completion using a densitometer or soil-compaction meter calibrated to a reference test value based on laboratory testing according to ASTM D698. Space tests at no less than one for each 1000 sq. ft. of in-place soil or part thereof.
 2. Performance Testing: For each amended planting-soil type, demonstrating compliance with specified performance requirements. Perform testing according to "Soil-Sampling Requirements" and "Testing Requirements" articles.
- C. Soil will be considered defective if it does not pass tests and inspections.
- D. Prepare test and inspection reports.
- E. Label each sample and test report with the date, location keyed to a site plan or other location system, visible conditions when and where sample was taken, and sampling depth.

3.7 PROTECTION

- A. Protection Zone: Identify protection zones according to Section 015639 "Temporary Tree and Plant Protection."
- B. Protect areas of in-place soil from additional compaction, disturbance, and contamination. Prohibit the following practices within these areas except as required to perform planting operations:
1. Storage of construction materials, debris, or excavated material.
 2. Parking vehicles or equipment.
 3. Vehicle traffic.
 4. Foot traffic.
 5. Erection of sheds or structures.
 6. Impoundment of water.
 7. Excavation or other digging unless otherwise indicated.
- C. If planting soil or subgrade is over compacted, disturbed, or contaminated by foreign or deleterious materials or liquids, remove the planting soil and contamination; restore the subgrade as directed by Owner's Representative and replace contaminated planting soil with new planting soil.

3.8 CLEANING

- A. Protect areas adjacent to planting-soil preparation and placement areas from contamination. Keep adjacent paving and construction clean and work area in an orderly condition.
- B. Remove surplus soil and waste material including excess subsoil, unsuitable materials, trash, and debris and legally dispose of them off Owner's property unless otherwise indicated.
1. Dispose of excess subsoil and unsuitable materials on-site where directed by Owner.

END OF SECTION 329113

SECTION 329200 - TURF AND GRASSES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section Includes:
 - 1. Seeding.
 - 2. Hydroseeding.
- B. Related Requirements:
 - 1. Section 329300 "Plants"
 - 2. Section 329113 "Soil Preparation"
 - 3. Section 329310 "Landscape Maintenance"

1.3 DEFINITIONS

- A. Finish Grade: Elevation of finished surface of planting soil.
- B. Pesticide: A substance or mixture intended for preventing, destroying, repelling, or mitigating a pest. Pesticides include insecticides, miticides, herbicides, fungicides, rodenticides, and molluscicides. They also include substances or mixtures intended for use as a plant regulator, defoliant, or desiccant.
- C. Pests: Living organisms that occur where they are not desired or that cause damage to plants, animals, or people. Pests include insects, mites, grubs, mollusks (snails and slugs), rodents (gophers, moles, and mice), unwanted plants (weeds), fungi, bacteria, and viruses.
- D. Planting Soil: Existing, on-site soil; imported soil; or manufactured soil that has been modified with soil amendments and perhaps fertilizers to produce a soil mixture best for plant growth. See Section 329113 "Soil Preparation" and drawing designations for planting soils.
- E. Subgrade: The surface or elevation of subsoil remaining after excavation is complete, or the top surface of a fill or backfill before planting soil is placed.

1.4 PREINSTALLATION MEETINGS

- A. Preinstallation Conference: Conduct conference at Project site.

1.5 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For landscape Installer.
- B. Certification of Grass Seed: From seed vendor for each grass-seed monostand or mixture, stating the botanical and common name, percentage by weight of each species and variety, and percentage of purity, germination, and weed seed. Include the year of production and date of packaging.
 - 1. Certification of each seed mixture. Include identification of source and name and telephone number of suppliers.
- C. Product Certificates: For fertilizers, from manufacturer.
- D. Pesticides and Herbicides: Product label and manufacturer's application instructions specific to Project.

1.6 CLOSEOUT SUBMITTALS

- A. Maintenance Data: Recommend procedures to be followed by Owner for maintenance of seeded areas during a calendar year after the contractor's maintenance period ends. Submit before expiration of required contractor's maintenance period.

1.7 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified landscape installer whose work has resulted in successful seeded area establishment.
 - 1. Professional Membership: Installer shall be a member in good standing of either the National Association of Landscape Professionals or AmericanHort.
 - 2. Experience: Five years' experience in turf installation in addition to requirements in Section 014000 "Quality Requirements."
 - 3. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when work is in progress.
 - 4. Personnel Certifications: Installer's field supervisor shall have certification in one of the following categories from the National Association of Landscape Professionals:
 - a. Landscape Industry Certified Technician - Exterior.
 - b. Landscape Industry Certified Lawn Care Manager.
 - c. Landscape Industry Certified Lawn Care Technician.
 - 5. Pesticide Applicator: State licensed, commercial.

1.8 DELIVERY, STORAGE, AND HANDLING

- A. Seed and Other Packaged Materials: Deliver packaged materials in original, unopened containers showing weight, certified analysis, name and address of manufacturer, and indication of compliance with state and Federal laws, as applicable.

B. Bulk Materials:

1. Do not dump or store bulk materials near structures, utilities, walkways, and pavements, or on existing turf areas or plants.
2. Provide erosion-control measures to prevent erosion or displacement of bulk materials; discharge of soil-bearing water runoff; and airborne dust reaching adjacent properties, water conveyance systems, or walkways.
3. Accompany each delivery of bulk materials with appropriate certificates.

1.9 FIELD CONDITIONS

A. Planting Restrictions: Plant during one of the following periods, unless authorized by the Owner's Representative. Coordinate seeding periods with initial maintenance periods to provide required maintenance from date of seeding completion.

1. Spring Planting: March through April.
2. Fall Planting: September through October 15.

B. Weather Limitations: Proceed with seeding only when existing and forecasted weather conditions, i.e. temperature, wind, and soil moisture conditions, permit seeding to be performed when beneficial and optimum results may be obtained. Apply products during favorable weather conditions according to manufacturer's written instructions and warranty requirements.

PART 2 - PRODUCTS

2.1 SEED

A. Grass Seed: Fresh, clean, dry, new-crop seed complying with AOSA's "Rules for Testing Seeds" for purity and germination tolerances.

B. Seed Species:

1. Quality, State Certified: State-certified seed of grass species as listed below for solar exposure.
2. Quality, Non-State Certified: Seed of grass species as listed below for solar exposure, with not less than 85 percent germination, not less than 95 percent pure seed, and not more than 0.5 percent weed seed:

C. Grass-Seed Mix: Proprietary seed mix as follows:

1. Products: Subject to compliance with requirements, provide the following:

- a. SEED MIX 1 – Sunmark Seeds – Native Riparian Mix .
503-241-7333
info@sunmarkseeds.com
Or approved equal.
Rate \; See drawings for rate of application.
- b. SEED MIX 2 – Sunmark Seeds – Native Upland Mix .

503-241-7333
info@sunmarkseeds.com
Or approved equal.
Rate \; See drawings for rate of application.

2.2 FERTILIZERS

- A. Commercial Fertilizer: Commercial-grade complete fertilizer of neutral character, consisting of fast- and slow-release nitrogen, 50 percent derived from natural organic sources of urea formaldehyde, phosphorous, and potassium in the following composition:
 - 1. Composition:
 - a. Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing laboratory.
- B. Slow-Release Fertilizer: Granular or pelleted fertilizer consisting of 50 percent water-insoluble nitrogen, phosphorus, and potassium in the following composition:
 - 1. Composition:
 - a. Nitrogen, phosphorous, and potassium in amounts recommended in soil reports from a qualified soil-testing laboratory.

2.3 MULCHES

- A. Straw Mulch: Provide air-dry, clean, mildew- and seed-free, salt hay or threshed straw of wheat, rye, oats, or barley.
- B. Fiber Mulch: Biodegradable, dyed-wood, cellulose-fiber mulch; nontoxic and free of plant-growth or germination inhibitors; with a maximum moisture content of 15 percent and a pH range of 4.5 to 6.5.
- C. Nonasphaltic Tackifier: Colloidal tackifier recommended by fiber-mulch manufacturer for slurry application; nontoxic and free of plant-growth or germination inhibitors.

2.4 PESTICIDES

- A. General: Pesticide, registered and approved by the EPA, acceptable to authorities having jurisdiction, and of type recommended by manufacturer for each specific problem and as required for Project conditions and application. Do not use restricted pesticides unless authorized in writing by authorities having jurisdiction.
- B. Pre-Emergent Herbicide (Selective and Nonselective): Effective for controlling the germination or growth of weeds within planted areas at the soil level directly below the mulch layer.
- C. Post-Emergent Herbicide (Selective and Nonselective): Effective for controlling weed growth that has already germinated.

2.5 EROSION-CONTROL MATERIALS

- A. Erosion-Control Blankets: Biodegradable wood excelsior, straw, or coconut-fiber mats. Include manufacturer's recommended steel wire staples, 6 inches long.
- B. Erosion-Control Fiber Mesh: Biodegradable burlap or spun-coir mesh, a minimum of 0.92 lb./sq. yd., with 50 to 65 percent open area. Include manufacturer's recommended steel wire staples, 6 inches long.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine areas to be planted for compliance with requirements and other conditions affecting installation and performance of the Work.
 - 1. Verify that no foreign or deleterious material or liquid such as paint, paint washout, concrete slurry, concrete layers or chunks, cement, plaster, oils, gasoline, diesel fuel, paint thinner, turpentine, tar, roofing compound, or acid has been deposited in soil within a planting area.
 - 2. Suspend planting operations during periods of excessive soil moisture until the moisture content reaches acceptable levels to attain the required results.
 - 3. Uniformly moisten excessively dry soil that is not workable, or which is dusty.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.
- C. If contamination by foreign or deleterious material or liquid is present in soil within a planting area, remove the soil and contamination as directed by Owner's Representative and replace with new planting soil.

3.2 PREPARATION

- A. Protect structures; utilities; sidewalks; pavements; and other facilities, trees, shrubs, and plantings from damage caused by planting operations.
 - 1. Protect adjacent and adjoining areas from hydroseeding and hydromulching overspray.
 - 2. Protect grade stakes set by others until directed to remove them.
- B. Install erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.

3.3 TURF AREA PREPARATION

- A. General: Prepare planting area for soil placement and mix planting soil according to Section 329113 "Soil Preparation."
- B. Placing Planting Soil: Place and mix planting soil in place over exposed subgrade and or Blend planting soil in place.

- C. Moisten prepared area before planting if soil is dry. Water thoroughly and allow surface to dry before planting. Do not create muddy soil.
- D. Before planting, obtain Owner's Representative's acceptance of finish grading; restore planting areas if eroded or otherwise disturbed after finish grading.
- E. The contractor has the option of either 3.5 or 3.6 for the seeding operation.

3.4 PREPARATION FOR EROSION-CONTROL MATERIALS

- A. Prepare area as specified in "Turf Area Preparation" Article.
- B. For erosion-control blanket or mesh, install from top of slope, working downward, and as recommended by material manufacturer for site conditions. Fasten as recommended by material manufacturer.
- C. Moisten prepared area before planting if surface is dry. Water thoroughly and allow surface to dry before planting. Do not create muddy soil.

3.5 SEEDING

- A. Sow seed with spreader or seeding machine. Do not broadcast or drop seed when wind velocity exceeds 5 mph.
 - 1. Evenly distribute seed by sowing equal quantities in two directions at right angles to each other.
 - 2. Do not use wet seed or seed that is moldy or otherwise damaged.
 - 3. Do not seed against existing trees. Limit extent of seed to outside edge of planting saucer.
- B. Sow seed at a total rate as indicated on the drawings
- C. Rake seed lightly into top 1/8 inch of soil, roll lightly, and water with fine spray.
- D. Protect seeded areas with slopes exceeding 1:6 with erosion-control fiber mesh installed and stapled according to manufacturer's written instructions.
- E. Protect seeded areas with slopes not exceeding 1:6 by spreading straw mulch. Spread uniformly at a minimum rate of 2 tons/acre to form a continuous blanket 1-1/2 inches in loose thickness over seeded areas. Spread by hand, blower, or other suitable equipment.
 - 1. Anchor straw mulch by crimping into soil with suitable mechanical equipment.
- F. Protect seeded areas from hot, dry weather or drying winds by applying compost mulch within 24 hours after completing seeding operations. Soak areas, scatter mulch uniformly to a thickness of 3/16 inch, and roll surface smooth.

3.6 HYDROSEEDING

- A. Hydroseeding: Mix specified seed, commercial fertilizer, and fiber mulch in water, using equipment specifically designed for hydroseed application. Continue mixing until uniformly blended into homogeneous slurry suitable for hydraulic application. Complete clean out machine between different seed mixes.
 - 1. Mix slurry with fiber-mulch manufacturer's recommended tackifier.
 - 2. Spray-apply slurry uniformly to all areas to be seeded in a one-step process. Apply slurry at a rate so that mulch component is deposited at not less than 1500-lb/acre dry weight, and seed component is deposited at not less than the specified seed-sowing rate.

3.7 TURF MAINTENANCE

- A. General: Maintain and establish turf by watering, fertilizing, weeding, mowing, trimming, replanting, and performing other operations as required to establish healthy, viable turf. Roll, regrade, and replant bare or eroded areas and remulch to produce a uniformly smooth turf. Provide materials and installation the same as those used in the original installation.
 - 1. Fill in as necessary soil subsidence that may occur because of settling or other processes. Replace materials and turf damaged or lost in areas of subsidence.
 - 2. In areas where mulch has been disturbed by wind or maintenance operations, add new mulch and anchor as required to prevent displacement.
 - 3. Apply treatments as required to keep turf and soil free of pests and pathogens or disease. Use integrated pest management practices whenever possible to minimize the use of pesticides and reduce hazards.
- B. Watering: Install and maintain temporary piping, hoses, and turf-watering equipment to convey water from sources and to keep turf uniformly moist to a depth of 4 inches.
 - 1. Schedule watering to prevent wilting, puddling, erosion, and displacement of seed or mulch. Lay out temporary watering system to avoid walking over muddy or newly planted areas.
 - 2. Water turf with fine spray at a minimum rate of 1 inch per week unless rainfall precipitation is adequate.
- C. Turf Postfertilization: Apply slow-release fertilizer after initial mowing and when grass is dry.
 - 1. Use fertilizer that provides actual nitrogen of at least 1 lb./1000 sq. ft. to turf area.

3.8 SATISFACTORY TURF

- A. Turf installations shall meet the following criteria as determined by Owner's Representative:
 - 1. Satisfactory Seeded Turf: At end of maintenance period, a healthy, uniform, close stand of grass has been established, free of weeds and surface irregularities, with coverage exceeding 90 percent over any 10 sq. ft. and bare spots not exceeding 5 by 5 inches.

- B. Use specified materials to reestablish turf that does not comply with requirements and continue maintenance until turf is satisfactory.

3.9 PESTICIDE APPLICATION

- A. Apply pesticides and other chemical products and biological control agents according to requirements of authorities having jurisdiction and manufacturer's written recommendations. Coordinate applications with Owner's operations and others in proximity to the Work. Notify Owner before each application is performed.
- B. Post-Emergent Herbicides (Selective and Nonselective): Apply only as necessary to treat already-germinated weeds and according to manufacturer's written recommendations.

3.10 CLEANUP AND PROTECTION

- A. Promptly remove soil and debris created by turf work from paved areas. Clean wheels of vehicles before leaving site to avoid tracking soil onto roads, walks, or other paved areas.
- B. Remove surplus soil and waste material, including excess subsoil, unsuitable soil, trash, and debris, and legally dispose of them off Owner's property.
- C. Erect temporary fencing or barricades and warning signs as required to protect newly planted areas from traffic. Maintain fencing and barricades throughout initial maintenance period and remove after plantings are established.
- D. Remove nondegradable erosion-control measures after grass establishment period.

3.11 MAINTENANCE SERVICE

- A. Turf Maintenance Service: Provide full maintenance by skilled employees of landscape installer. Maintain as required in "Turf Maintenance" Article. Begin maintenance immediately after each area is planted and continue until acceptable turf is established, but for not less than the following periods:
 - 1. Seeded Turf: 60 days from date of Substantial Completion.
 - a. When initial maintenance period has not elapsed before end of planting season, or if turf is not fully established, continue maintenance during next planting season.

END OF SECTION 329200

SECTION 329300 - PLANTS

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section Includes:

1. Plants.
2. Fertilizers.
3. Pesticides and herbicides.
4. Mulch.
5. Maintenance during warranty period.

- B. Related Requirements:

1. Section 311000 "Site Clearing" for clearing and preparation of plant beds prior to planting.
2. Section 328400 "Planting Irrigation" for installation of irrigation equipment around trees and shrubs.
3. Section 329113 "Soil Preparation" for preparation of plant bed soil prior to or during planting.
4. Section 329200 "Turf and Grasses" for turf (lawn), hydroseeding, and erosion-control materials.
5. Section 329310 "Landscape Maintenance"

1.3 DEFINITIONS

- A. Backfill: The earth used to replace or the act of replacing earth in an excavation.
- B. Balled and Burlapped Stock: Plants established in the ground and dug with firm, natural balls of earth in which they were grown and wrapped with burlap and twine.
- C. Balled and Potted Stock: Plants established in the ground dug with firm, natural balls of earth in which they are grown and placed, unbroken, in a container.
- D. Bare-Root Stock: Plants established in the ground that are dug and delivered with soil or growing medium removed from its roots.
- E. Branch: An outgrowing shoot, stem or twig that grows from the main stem or trunk.
- F. Caliper: The measurement of a nursery stock tree as determined in the latest edition of the ANSI Z60.1.

- G. Container-Grown Stock: Plants established above ground grown in a removable tub or pot container filled with growing medium.
- H. Crown: The portion of a tree consisting of leaves and branches.
- I. Defective Plant: Any plant that fails to meet the plant quality requirements of this Section.
- J. Fabric Bag-Grown Stock: Plant grown within a fabric bag in-ground to manipulate root growth to develop a fibrous root system within the bag. Fabric bags may be used above ground as a container.
- K. Finish Grade: Elevation of finished surface of planting soil.
- L. Healthy: Description of quality related to living plants that are growing in a condition that expresses their leaf size, crown density, color, and annual growth rates typical of their horticultural description in the region.
- M. Included Bark: Ingrown bark tissues that develop where two or more stems grow closely together creating weak stem connections prone to breaking.
- N. Kinked Root: A root within the root package that bends more than 90 degrees.
- O. Pesticide: A substance or mixture intended for preventing, destroying, repelling, or mitigating a pest. Pesticides include insecticides, miticides, herbicides, fungicides, rodenticides, and molluscicides. They also include substances or mixtures intended for use as a plant regulator, defoliant, or desiccant. Some sources classify herbicides separately from pesticides.
- P. Pests: Living organisms that occur where they are not desired or that cause damage to plants, animals, or people. Pests include insects, mites, grubs, mollusks (snails and slugs), rodents (gophers, moles, and mice), unwanted plants (weeds), fungi, bacteria, and viruses.
- Q. Plug: Seeding or rooted cuttings grown in a cylinder of planting medium at a nursery. Sometimes referred to as a "tubeling."
- R. Planting Area: Areas to be planted with any combination of groundcovers, shrubs, trees and installed with mulch.
- S. Planting Soil: Existing, on-site soil; imported soil; or manufactured soil that has been modified with soil amendments and perhaps fertilizers to produce a soil mixture best for plant growth. See Section 329113 "Soil Preparation" for drawing designations for planting soils.
- T. Plant; Plants; Plant Material: These terms refer to vegetation in general, including trees, shrubs, vines, plugs, tubelings, ground covers, ornamental grasses, bulbs, corms, tubers, or any herbaceous vegetation.
- U. Root Crown; Root Flare; Root Collar; Trunk Flare: The area at the base of the plant's stem or trunk where the stem or trunk broadens to form roots and "flares" away from the tree's trunk; the area of transition between the root system and the stem or trunk.
- V. Root Ball: The mass of roots including any soil or substrate that is shipped with the tree within the root ball package.

- W. Shrub: Wood plants with mature height approximately less than 15 feet.
- X. Stem: Structure and support of a plant connecting the roots and leaves; may be woody or herbaceous.
- Y. Stem Girdling Roots: Roots that encircle the stems (trunks) of trees below the soil surface.
- Z. Subgrade: The surface or elevation of subsoil remaining after excavation is complete, or the top surface of a fill or backfill before planting soil is placed.
- AA. Tree: Single and multi-stemmed plants with mature height approximately greater than 15 feet.
- BB. Trunk: Portion of woody stem or stems of a tree between the roots and the canopy.
- CC. Vine: Woody or herbaceous climbing plant material.
- DD. Whip: A young tree without branches

1.4 COORDINATION

- A. Coordination with Seeded Areas: Plant trees, shrubs, and other plants after finish grades are established and before planting seeded areas unless otherwise indicated.
 - 1. When planting trees, shrubs, and other plants after planting turf areas, protect turf areas, and promptly repair damage caused by planting operations.
 - 2. Coordinate planting installation with planting soil installation according to Section 329113 "Soil Preparation."

1.5 PREINSTALLATION MEETINGS

- A. Preinstallation Conference: Conduct conference at Project site.

1.6 ACTION SUBMITTALS

- A. Product Data: For each type of product.
 - 1. Plant Materials: Include quantities, sizes, quality, and sources for plant materials. Invoices to be provided a maximum of one month after authorization to proceed. Copies must indicate source of supply by name, address, and phone number.
 - 2. Product Data: For each type of product indicated.
- B. Samples for Verification: For each of the following:
 - 1. Bark and Compost Mulch: 1-quart volume of each mulch required; in sealed plastic bags labeled with composition of materials by percentage of weight and source of mulch. Each Sample shall be typical of the lot of material to be furnished; provide an accurate representation of color, texture, and organic makeup.

1.7 INFORMATIONAL SUBMITTALS

- A. Qualification Data: For landscape Installer. Include list of similar projects completed by Installer demonstrating Installer's capabilities and experience. Include project names, addresses, and year completed, and include names and addresses of owners' contact persons.
- B. Inspection Certificates: For plant materials furnished. Provide to Owner's Representative inspection certificates required by law for each shipment of plant materials.
- C. Product Certificates: For each type of manufactured product, from manufacturer, and complying with the following:
 - 1. Manufacturer's certified analysis of standard products.
 - 2. Analysis of other materials by a recognized laboratory made according to methods established by the Association of Official Analytical Chemists, where applicable.
- D. Pesticides and Herbicides: Product label and manufacturer's application instructions specific to Project.
- E. Sample Warranty: For special warranty.

1.8 CLOSEOUT SUBMITTALS

- A. Maintenance Data: Recommend procedures to be followed by Owner for maintenance of plants during a calendar year after the contractor's maintenance period ends. Submit before expiration of required contractor's maintenance period.

1.9 QUALITY ASSURANCE

- A. Installer Qualifications: A qualified landscape installer whose work has resulted in successful establishment of plants.
 - 1. Professional Membership: Installer shall be a member in good standing of either the National Association of Landscape Professionals or AmericanHort.
 - 2. Experience: Five years' experience in landscape installation.
 - 3. Installer's Field Supervision: Require Installer to maintain an experienced full-time supervisor on Project site when work is in progress.
 - 4. Pesticide and Herbicide Applicator: State licensed, commercial.
 - 5. Personnel Certifications: Installer's field supervisor shall have certification in one of the following categories from the National Association of Landscape Professionals:
 - a. Landscape Industry Certified Technician - Exterior.
 - b. Landscape Industry Certified Interior.
 - c. Landscape Industry Certified Horticultural Technician.
- B. Provide quality, size, genus, species, and variety of plants indicated, complying with applicable requirements in ANSI Z60.1.
- C. Measurements: Measure according to ANSI Z60.1. Do not prune to obtain required sizes.

1. Trees and Shrubs: Measure with branches and trunks or canes in their normal position. Take height measurements from or near the top of the root flare for field-grown stock and container-grown stock. Measure main body of tree or shrub for height and spread; do not measure branches or roots tip to tip. Take caliper measurements 6 inches above the root flare for trees up to 4-inch caliper size, and 12 inches above the root flare for larger sizes.
 2. Other Plants: Measure with stems, petioles, and foliage in their normal position.
- D. Plant Material Observation: Owner's Representative may observe plant material either at place of growth or at site before planting for compliance with requirements for genus, species, variety, cultivar, size, and quality. Owner's Representative may also observe trees and shrubs further for size and condition of balls and root systems, pests, disease symptoms, injuries, and latent defects and may reject unsatisfactory or defective material at any time during progress of work. Remove rejected trees or shrubs immediately from Project site.
1. Notify Owner's Representative of sources of planting materials seven days in advance of delivery to site.

1.10 DELIVERY, STORAGE, AND HANDLING

- A. Packaged Materials: Deliver packaged materials in original, unopened containers showing weight, certified analysis, name and address of manufacturer, and indication of compliance with state and Federal laws if applicable.
- B. Bulk Materials:
1. Do not dump or store bulk materials near structures, utilities, walkways, and pavements, or on existing turf areas or plants.
 2. Store fertilizers in a dry place and protect from moisture.
 3. Provide erosion-control measures to prevent erosion or displacement of bulk materials; discharge of soil-bearing water runoff; and airborne dust reaching adjacent properties, water conveyance systems, or walkways.
 4. Accompany each delivery of bulk materials with appropriate certificates.
- C. Deliver bare-root stock plants within 24 hours of digging. Immediately after digging up bare-root stock, pack root system in wet straw, hay, or other suitable material to keep root system moist until planting. Transport in covered, temperature-controlled vehicles, and keep plants cool and protected from sun and wind at all times.
- D. Do not prune trees and shrubs before delivery. Protect bark, branches, and root systems from sun scald, drying, wind burn, sweating, whipping, and other handling and tying damage. Do not bend or bind-tie trees or shrubs in such a manner as to destroy their natural shape. Provide protective covering of plants during shipping and delivery. Do not drop plants during delivery and handling.
- E. Handle planting stock by root ball.
- F. Store bulbs, corms, and tubers in a dry place at 60 to 65 deg F until planting.
- G. Apply antidesiccant to trees and shrubs using power spray to provide an adequate film over trunks (before wrapping), branches, stems, twigs, and foliage to protect during digging, handling, and transportation.

1. If deciduous trees or shrubs are moved in full leaf, spray with antidesiccant at nursery before moving and again two weeks after planting.
- H. Wrap trees and shrubs with burlap fabric over trunks, branches, stems, twigs, and foliage to protect from wind and other damage during digging, handling, and transportation.
- I. Deliver plants after preparations for planting have been completed and install immediately. If planting is delayed more than six hours after delivery, set plants and trees in their appropriate aspect (sun, filtered sun, or shade), protect from weather and mechanical damage, and keep roots moist. Plant materials showing damage from shipping, storage or handling will be rejected and shall be replaced at the Contractor's expense.
 1. Heel-in bare-root stock. Soak roots that are in less than moist condition in water for two hours. Reject plants with dry roots.
 2. Set balled stock on ground and cover ball with soil, peat moss, sawdust, or other acceptable material.
 3. Do not remove container-grown stock from containers before time of planting.
 4. Water root systems of plants stored on-site deeply and thoroughly with a fine-mist spray. Water as often as necessary to maintain root systems in a moist, but not overly wet condition.

1.11 FIELD CONDITIONS

- A. Field Measurements: Verify actual grade elevations, service and utility locations, irrigation system components, and dimensions of plantings and construction contiguous with new plantings by field measurements before proceeding with planting work.
- B. Planting Restrictions: Plant during the following period unless authorized by the Owner's Representative. Coordinate planting period with maintenance period to provide required maintenance from date of planting completion.
 1. West of Cascade Mountains: September 1 through May 15.
 2. Plants with Automatic Irrigation: Installed outside the above planting periods only with prior written approval from Owner's Representative.
- C. Weather Limitations: Proceed with planting only when existing and forecasted weather conditions, i.e. temperature, wind, and soil moisture conditions, permit planting to be performed when beneficial and optimum results may be obtained. Apply products during favorable weather conditions according to manufacturer's written instructions and warranty requirements.

1.12 WARRANTY

- A. Special Warranty: Installer agrees to repair or replace plantings and accessories that fail in materials, workmanship, or growth within specified warranty period.
 1. Failures include, but are not limited to, the following:
 - a. Death and unsatisfactory growth, except for defects resulting from abuse, lack of adequate maintenance, or neglect by Owner.

- b. Visual presence of plant diseases or insect infestations.
 - c. Structural failures including plantings falling or blowing over.
 - d. Deterioration of metals, metal finishes, and other materials beyond normal weathering.
2. Warranty Periods: From date of Substantial Completion.
 - a. Trees, Shrubs, Vines, and Ornamental Grasses: 36 months.
 - b. Ground Covers, Biennials, Perennials, and Other Plants: 36 months.
 - c. Annuals: Three months.
3. General: The warranty period for plantings will include the healthy survival of 100 percent of the trees; the healthy survival of 100 percent of shrubs, ornamental grasses, and vines; and the healthy survival of 100 percent of groundcovers, plugs, perennials, and biennials.
4. Include the following remedial actions as a minimum:
 - a. Immediately remove dead plants and replace unless required to plant in the succeeding planting season.
 - b. Replace plants that do not meet the minimum healthy survival percentage requirements at end of warranty period.
 - c. A limit of one replacement of each plant is required except for losses or replacements due to failure to comply with requirements.
 - d. Provide extended warranty for period equal to original warranty period, for replaced plant material.
5. Warranty Guarantee: A financial instrument as a warranty guarantee in the amount of 100 percent of the contract amount (including all labor, equipment, and materials). Acceptable instruments for the warranty guarantee are as follows:
 - a. A warranty guarantee incorporated with the performance guarantee.
 - b. A maintenance bond.
 - c. Cash deposit with Owner.
6. Warranty Exemptions: After Substantial Completion acceptance and during the warranty period, incidents that exempt replacement include: plants removed by others, plants that are lost or damaged, plants impacted due to occupancy of project, plants lost or damaged by a third party, plants lost due to vandalism, or any natural disaster impacting plants.
7. Warranty Period Closure: During and by the end of the warranty period, remove all tree wraps, ties, and guying. All trees that lack sufficient caliper to remain upright or those requiring further anchorage are to remain staked as approved by the Owner's Representative.
8. End of Warranty and Final Acceptance: Upon written request prior to the end of the warranty period date, the Owner's Representative will observe all warranted Work for final acceptance.

1.13 SUBSTITUTION REQUESTS

- A. Size and species of plants that cannot be obtained due to lack of availability can be requested to be substituted. Submit all requests to Owner's Representative with a list of plant sizes, species, and nursery contact information for approval prior to issuing a formal submittal.

PART 2 - PRODUCTS

2.1 PLANT MATERIAL

- A. General: Furnish nursery-grown plants true to genus, species, variety, cultivar, stem form, shearing, and other features indicated on Drawings.
1. All plant materials furnished, including root ball dimensions or container size to trunk caliper ratio, shall comply with ANSI Z60.1 where applicable.
 2. Collected Stock: Do not use plants harvested from the wild, from native stands, from an established landscape planting, or not grown in a nursery unless otherwise indicated.
 3. Provide plants of sizes, grades, and ball or container sizes for types and form of plants. Plants of a larger size may be used if acceptable to Owner's Representative, with a proportionate increase in size of roots or balls.
 4. Compliance: All plant materials shall comply with state and Federal laws and regulations for plant diseases, pests, and weeds.
 5. Cold storage plants are not permitted.
- B. Plant Quality: Furnish plants with healthy root systems developed by transplanting or root pruning. Provide well-shaped, fully branched, healthy, vigorous stock, densely foliated when in leaf and free of disease, conks, pests, eggs, larvae, and defects such as knots, galls, lesions, sun scald, injuries, abrasions, wood cracks, sap leakage, flush pruning cuts, and disfigurement.
1. Trees: Relatively straight, vertical trunk typical of species, capable of standing upright without supplemental staking, and with a single central leader. Crooked, or multiple leaders; tight vertical branches where bark is squeezed between two branches or between branch and trunk ("included bark"); crossing trunks; cut-off limbs more than 3/4 inch in diameter; or with stem girdling roots are unacceptable conditions.
 2. Graft Unions: Unions, where applicable, are completely closed, without signs of rejection, healed, and visible above the root ball soil line.
 3. Root-Ball Quality: Measured from top of root ball, which begins at root flare according to ANSI Z60.1. Root flare shall be visible before planting. Root balls with roots favoring one side of the ball or with kinked roots are subject to be rejected.
 4. Crown: Form and density typical of species, its stage of growth, and time of year.
 5. Leaves: Size, color, and appearance typical of species, its stage of growth, and time of year and be absent of wilted, shriveled, or dead leaves.
 6. Branches: Even distribution of shoot growth throughout the crown typical of species, time of year, and absent of dead, diseased, broken, distorted or injured stems.
 7. Trunk: crooked trunks with wounds, conks, cracks, lesions, or inadequate pruning scars; Relatively straight, vertical typical of species and free of wounds that penetrate to the wood, sunburned areas, conks, wood cracks, sap leakage, signs of boring insects, galls, cankers, girdling ties or lesions.
- C. Balled and Burlapped Plants: Furnish field grown plants dug with firm, natural ball of earth in which they were grown in complying with ANSI Z60.1 for type and size of plant required; wrapped with burlap, tied, rigidly supported, and drum laced with twine and optionally accompanied with a wire basket. Root flare to be visible at the surface of the ball as recommended by ANSI Z60.1. Burlap and twine materials to be natural and fully biodegradable.

- D. Container Plants: Furnish healthy, vigorous, well-rooted plants grown in a removable and recyclable container, with a well-established root system reaching sides of container and maintaining a firm ball when removed from container but not root bound. Container shall be rigid enough to hold ball shape and protect root mass during shipping and be sized according to ANSI Z60.1 for type and size of plant required.
- E. Bare-Root Plants: Furnish plants with a well-branched, fibrous-root system developed by transplanting or root pruning, with soil or growing medium removed, and with not less than the minimum root spread according to ANSI Z60.1 for type and size of plant required. Plants to be harvested while fully dormant and a minimum of 4 weeks before plants leaf out.
- F. Fabric Bag-Grown Stock: Healthy, vigorous, well-rooted plants established and grown in-ground in a porous fabric bag with well-established root system reaching sides of fabric bag. Fabric bag size is not less than diameter, depth, and volume required by ANSI Z60.1 for type and size of plant.
- G. Labeling: Label each individual tree and at least one plant of each variety and size for all other plant types with a securely attached, waterproof tag bearing legible designation of common name and full scientific name, including genus and species. Include nomenclature for hybrid, variety, or cultivar, if applicable for the plant.
- H. If formal arrangements or consecutive order of plants is indicated on Drawings, select stock for uniform height and spread, and number the labels to assure symmetry in planting.
- I. Annuals and Biennials: Provide healthy, disease-free plants of species and variety shown or listed, with well-established root systems reaching to sides of the container to maintain a firm ball, but not with excessive root growth encircling the container. Provide only plants that are acclimated to outdoor conditions before delivery and that are in bud but not yet in bloom.

2.2 FERTILIZERS

- A. Planting Tablets: Tightly compressed chip-type, long-lasting, slow-release, commercial-grade planting fertilizer in tablet form. Tablets shall break down with soil bacteria, converting nutrients into a form that can be absorbed by plant roots. Fertilizers to meet 0-F-241D, "Federal Specification, Fertilizer, Mixed, Commercial."
 - 1. Size: 10-gram tablets.
 - 2. Nutrient Composition: 20 percent nitrogen, 10 percent phosphorous, and 5 percent potassium, by weight plus micronutrients.

2.3 MULCHES

- A. Organic Mulch: Commercially produced, free from deleterious materials and suitable as a top dressing of trees and shrubs, consisting of the following:
 - 1. Type: Leaf Mulch and or chipped woody tree material from the site (no blackberries, ivy etc.).
 - 2. Chipped Size Range: 2-inch minus, fine to medium texture.
 - 3. Color: Natural.

- B. Compost Mulch: Commercially produced, well-composted, stable, and weed-free organic matter, pH of 5.5 to 8; moisture content 35 to 55 percent by weight; 100 percent passing through a 1-1/2 inch sieve; soluble-salt content of 2 to 5 dS/m; not exceeding 0.5 percent inert contaminants and free of substances toxic to plantings; and as follows:
 - 1. Organic Matter Content: 50 to 60 percent of dry weight.
 - 2. Feedstock: Agricultural, food, or industrial residuals; biosolids; yard trimmings; or source-separated or compostable mixed solid waste.
 - 3. Ratio of Carbon to Nitrogen: 25:1.

2.4 PESTICIDES AND HERBICIDES

- A. General: Pesticide registered and approved by the EPA and state of Oregon, acceptable to authorities having jurisdiction, and of type recommended by manufacturer for each specific problem and as required for Project conditions and application. Do not use restricted pesticides unless authorized in writing by authorities having jurisdiction. Use of neonicotinoids class of pesticides are prohibited.
- B. Pre-Emergent Herbicide (Selective and Nonselective): Registered and approved by the EPA and state of Oregon. Effective for controlling the germination or growth of weeds within planted areas at the soil level directly below the mulch layer.
- C. Post-Emergent Herbicide (Selective and Nonselective): Registered and approved by the EPA and state of Oregon. Effective for controlling weed growth that has already germinated.

2.5 MISCELLANEOUS PRODUCTS

- A. Antidesiccant: Water-insoluble emulsion, permeable moisture retarder, film forming, for trees and shrubs. Deliver in original, sealed, and fully labeled containers and mix according to manufacturer's written instructions.
- B. Burlap: Non-synthetic, biodegradable.
- C. Mycorrhizal Fungi: Dry, granular inoculant containing at least 5300 spores per lb. of vesicular-arbuscular mycorrhizal fungi and 95 million spores per lb. of ectomycorrhizal fungi, 33 percent hydrogel, and a maximum of 5.5 percent inert material.
- D. Biochar: Commercially available soil amendment, high carbon fine-grained residue charcoal byproduct of sustainably sourced biomass material via pyrolysis, suitable for plant growth and soil health.
 - 1. Cationic Exchange Capacity: 25 to 45 millieq/l.
 - 2. Carbon: 85 wt. percent C.
 - 3. Moisture: 15 wt. percent H₂O.
 - 4. pH: 7.
- E. Water: Suitable for planting irrigation and free from oil, acid, alkali, salt, or other substances harmful to plant, animal, or aquatic life.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Examine areas to receive plants, with Installer present, for compliance with requirements and conditions affecting installation and performance of the Work.
 - 1. Verify that no foreign or deleterious material or liquid such as paint, paint washout, concrete slurry, concrete layers or chunks, cement, plaster, oils, gasoline, diesel fuel, paint thinner, turpentine, tar, roofing compound, or acid has been deposited in soil within a planting area.
 - 2. Verify that plants and vehicles loaded with plants can travel to planting locations with adequate overhead clearance.
 - 3. Suspend planting operations during periods of excessive soil moisture until the moisture content reaches acceptable levels to attain the required results.
 - 4. Uniformly moisten excessively dry soil that is not workable, or which is dusty.
 - 5. Verify the subgrade and planting soils are at appropriate elevations and meet all quality requirements for areas receiving plants.
- B. If contamination by foreign or deleterious material or liquid is present in soil within a planting area, remove the soil and contamination as directed by Owner's Representative and replace with new planting soil.
- C. Proceed with installation only after unsatisfactory conditions have been corrected.

3.2 PREPARATION

- A. Protect structures, utilities, sidewalks, pavements, and other facilities and turf areas and existing plants from damage caused by planting operations.
- B. Install erosion-control measures to prevent erosion or displacement of soils and discharge of soil-bearing water runoff or airborne dust to adjacent properties and walkways.
- C. Lay out individual tree and shrub locations and areas for multiple plantings. Stake locations, outline areas, adjust locations when requested, and obtain Owner's Representative acceptance of layout before excavating or planting. Make minor adjustments as required.
- D. Lay out plants at locations indicated on Drawings. Stake locations of individual trees and shrubs and outline areas for multiple plantings.

3.3 PLANTING AREA ESTABLISHMENT

- A. General: Prepare planting area for soil placement and mix planting soil according to Section 329113 "Soil Preparation."
- B. Placing Planting Soil: Place and mix planting soil in-place over exposed subgrade or Blend planting soil in place.

- C. Before planting, obtain Owner's Representative's acceptance of finish grading; restore planting areas if eroded or otherwise disturbed after finish grading.
- D. Application of Mycorrhizal Fungi: Broadcast dry product uniformly over prepared soil at application rate according to soil test analysis.

3.4 EXCAVATION FOR TREES AND SHRUBS

- A. Planting Pits and Trenches: Excavate circular planting pits.
 - 1. Excavate planting pits with sides sloping inward at a 45-degree angle. Excavations with vertical sides are unacceptable. Trim perimeter of bottom leaving center area of bottom raised slightly to support root ball and assist in drainage away from center. Do not further disturb base. Ensure that root ball will sit on undisturbed base soil to prevent settling. Scarify sides of planting pit smeared or smoothed during excavation.
 - 2. Excavate approximately two times as wide as ball diameter for balled and burlapped balled and potted container-grown stock.
 - 3. Excavate at least 12 inches wider than root spread and deep enough to accommodate vertical roots for bare-root stock.
 - 4. Do not excavate deeper than depth of the root ball, measured from the root flare to the bottom of the root ball.
 - 5. If area under the plant was initially dug too deep, add soil to raise it to the correct level and thoroughly tamp the added soil to prevent settling.
 - 6. Maintain angles of repose of adjacent materials to ensure stability. Do not excavate subgrades of adjacent paving, structures, hardscapes, or other new or existing improvements.
 - 7. Maintain supervision of excavations during working hours.
 - 8. Keep excavations covered or otherwise protected when unattended by Installer's personnel.
- B. Backfill Soil: Subsoil and topsoil removed from excavations may be used as backfill soil unless otherwise indicated.
- C. Backfill Soil: Subsoil and topsoil removed from excavations may only be used if amended according to 329113 "Soil Preparation".
- D. Obstructions: Notify Owner's Representative if unexpected rock or obstructions detrimental to trees or shrubs are encountered in excavations.
 - 1. Hardpan Layer: Drill 6-inch-diameter holes, 24 inches apart, into free-draining strata or to a depth of 10 feet, whichever is less, and backfill with free-draining material.
- E. Drainage: Notify Owner's Representative if subsoil conditions evidence unexpected water seepage or retention in tree or shrub planting pits.
- F. Fill excavations with water and allow to percolate away before positioning trees and shrubs.

3.5 TREE, SHRUB, AND VINE PLANTING

- A. Inspection: At time of planting, verify that root flare is visible at top of root ball according to ANSI Z60.1. If root flare is not visible, remove soil in a level manner from the root ball to where the top-most root emerges from the trunk. After soil removal to expose the root flare, verify that root ball still meets size requirements.
- B. Roots: Remove stem girdling roots and kinked roots. Remove injured roots by cutting cleanly; do not break.
- C. Balled and Burlapped Stock: Set each plant plumb and in center of planting pit or trench with root flare above adjacent finish grades as indicated on Drawings.
 - 1. Backfill Method: Backfill around root ball with planting soil.
 - 2. After plant is set in hole, carefully cut, and remove burlap, rope, and metal wire baskets as indicated on Drawings. Remove pallets, if any, before setting. Do not use planting stock if root ball is cracked, broken, or compromised where the plant cannot stand upright. Root balls that are cracked but not compromised shall have the burlap cut down to depth indicated on Drawings and loosely retied with twine to stabilize root ball before backfilling.
 - 3. Backfill around root ball in layers, tamping to settle soil and eliminate voids and air pockets. When planting pit is approximately one-half filled, water thoroughly before placing remainder of backfill. Repeat watering until no more water is absorbed.
 - 4. Place planting tablets equally distributed around each planting pit when pit is approximately one-half filled. Place tablets beside the root ball about 1 inch from root tips; do not place tablets in bottom of the hole.
 - a. Quantity: Two per plant.
 - 5. Continue backfilling process. Water again after placing and tamping final layer of soil.
- D. Balled and Potted and Container-Grown Stock: Set each plant plumb and in center of planting pit or trench with root flare above adjacent finish grades as indicated on Drawings.
 - 1. Backfill Method: Backfill around root ball with planting soil.
 - 2. Carefully remove root ball from container without damaging root ball or plant. Loosen root mass as indicated on Drawings.
 - 3. Backfill around root ball in layers, tamping to settle soil and eliminate voids and air pockets. When planting pit is approximately one-half filled, water thoroughly before placing remainder of backfill. Repeat watering until no more water is absorbed.
 - 4. Place planting tablets equally distributed around each planting pit when pit is approximately one-half filled. Place tablets beside the root ball about 1 inch from root tips; do not place tablets in bottom of the hole.
 - a. Quantity: Two per plant.
 - 5. Continue backfilling process. Water again after placing and tamping final layer of soil.
- E. Bare-Root Stock: Set and support each plant in center of planting pit or trench with root flare above adjacent finish grade as indicated on Drawings.
 - 1. Backfill Method: Backfill around root ball with planting soil.

2. Spread roots without tangling or turning toward surface. Plumb before backfilling and maintain plumb while working.
 3. Carefully work backfill in layers around roots by hand. Bring roots into close contact with the soil.
 4. When planting pit is approximately one-half filled, water thoroughly before placing remainder of backfill. Repeat watering until no more water is absorbed.
 5. Place planting tablets equally distributed around each planting pit when pit is approximately one-half filled. Place tablets beside soil-covered roots about 1 inch from root tips; do not place tablets in bottom of the hole or touching the roots.
 - a. Quantity: Two per plant.
 6. Continue backfilling process. Water again after placing and tamping final layer of soil.
- F. Slopes: When planting on slopes, set the plant so the root flare on the uphill side is flush with the surrounding soil on the slope; the edge of the root ball on the downhill side will be above the surrounding soil. Apply enough soil to cover the downhill side of the root ball.

3.6 TREE, SHRUB, AND VINE PRUNING

- A. Remove only dead, dying, or broken branches as directed by Owner's Representative
- B. Prune and thin trees, shrubs, and vines as directed by Owner's Representative.
- C. Prune and thin trees, shrubs, and vines according to standard professional horticultural and arboricultural practices. Unless otherwise indicated by Owner's Representative, do not cut tree leaders; remove only injured, dying, or dead branches from trees and shrubs; and prune to retain natural character.
- D. Do not apply pruning paint to wounds.

3.7 GROUND COVER AND PLANT PLANTING

- A. Set out and space ground cover and plants other than trees, shrubs, and vines as indicated on Drawings in even rows with triangular spacing.
- B. Use planting soil for backfill.
- C. Dig holes large enough to allow spreading of roots.
- D. For rooted cutting plants supplied in flats, plant each in a manner that minimally disturbs the root system but to a depth not less than two nodes.
- E. Work soil around roots to eliminate air pockets and leave a slight saucer indentation around plants to hold water.
- F. Water thoroughly after planting, taking care not to cover plant crowns with wet soil.

- G. Protect plants from hot sun and wind; remove protection if plants show evidence of recovery from transplanting shock.

3.8 PLANTING AREA MULCHING

- A. Mulch backfilled surfaces of planting areas and other areas indicated.
 - 1. Mulch in Planting Zone Areas: Apply 3-inch average thickness of mulch around all plants to at least a 3-foot diameter. Do not place mulch directly onto trunks or stems of plants and maintain clear distance as indicated on Drawings.

3.9 PLANT MAINTENANCE (from initial installation until substantial completion)

- A. Maintain plantings by pruning, cultivating, watering, weeding, fertilizing, mulching, restoring planting saucers, adjusting, and repairing tree-stabilization devices, resetting to proper grades or vertical position, and performing other operations as required to establish healthy, viable plantings.
- B. Fill in, as necessary, soil subsidence that may occur because of settling or other processes. Replace mulch materials damaged or lost in areas of subsidence.
- C. Apply treatments as required to keep plant materials, planted areas, and soils free of pests and pathogens or disease. Use integrated pest management practices when possible to minimize use of pesticides and reduce hazards. Treatments include physical controls such as hosing off foliage, mechanical controls such as traps, and biological control agents.

3.10 PESTICIDE AND HERBICIDE APPLICATION (from initial installation until substantial completion)

- A. Apply pesticides and other chemical products and biological control agents according to authorities having jurisdiction and manufacturer's written recommendations. Coordinate applications with Owner's operations and others in proximity to the Work. Notify Owner before each application is performed.
- B. Pre-Emergent Herbicides (Selective and Nonselective): Apply to tree, shrub, and ground-cover areas according to manufacturer's written recommendations. Do not apply to seeded areas.
- C. Post-Emergent Herbicides (Selective and Nonselective): Apply only as necessary to treat already-germinated weeds and according to manufacturer's written recommendations.

3.11 REPAIR AND REPLACEMENT (through 1-year warranty period)

- A. General: Repair or replace existing or new trees and other plants that are damaged by construction operations, in a manner approved by Owner's Representative.
 - 1. Submit details of proposed pruning and repairs.
 - 2. Perform repairs of damaged trunks, branches, and roots within 24 hours, if approved.

3. Replace trees and other plants that cannot be repaired and restored to full-growth status, as determined by Owner's Representative.
- B. Remove and replace dead or unhealthy plant materials as required in the "Warranty" Article before the end of the corrections period. Replace plants that are damaged during construction operations that the Owner's Representative determines are incapable of restoring to normal growth pattern.
 1. Provide new trees of same size as those being replaced for each tree of 4 inches or smaller in caliper size.
 2. Species of Replacement Trees: Same species being replaced.

3.12 CLEANING AND PROTECTION

- A. During planting, keep adjacent paving and construction clean and work area in an orderly condition. Clean wheels of vehicles before leaving site to avoid tracking soil onto roads, walks, or other paved areas.
- B. Remove surplus soil and waste material including excess subsoil, unsuitable soil, trash, and debris and legally dispose of them off Owner's property.
- C. Protect plants from damage due to landscape operations and operations of other contractors and trades. Maintain protection during installation and maintenance periods. Treat, repair, or replace damaged plantings.
- D. After installation and before <Final Acceptance >, remove nursery tags, nursery stakes, tie tape, labels, wire, burlap, and other debris from plant material, planting areas, and Project site.

3.13 MAINTENANCE SERVICE (See also Landscape Maintenance - Section 329310)

- A. Maintenance Service for Trees and Shrubs: Provide maintenance by skilled employees of landscape Installer. Maintain as required in "Plant Maintenance" Article. Begin maintenance immediately after plants are installed and continue until plantings are acceptably healthy and well established, but for not less than maintenance period below:
 1. Warranty Maintenance Period: 36 months from date of Final Acceptance.
- B. Maintenance Service for Ground Cover and Other Plants: Provide maintenance by skilled employees of landscape Installer. Maintain as required in "Plant Maintenance" Article. Begin maintenance immediately after plants are installed and continue until plantings are acceptably healthy and well established, but for not less than maintenance period below:
 1. Warranty Maintenance Period: Thirty-six months from date of Final Acceptance.

END OF SECTION 329300

SECTION 329310 – LANDSCAPE MAINTENANCE

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section includes the following:
 - 1. Furnish labor, material, and equipment required to maintain landscaped areas for three years after date of Substantial Completion. Term of maintenance shall commence only after date of final written approval.
 - 2. Supply landscape maintenance quote as separate line item in construction proposal.
- B. Related Sections include the following:
 - 1. Section 311000; Site Clearing
 - 2. Section 015639; Temporary Plant Protection
 - 3. Section 328400; Planting Irrigation
 - 4. Section 329200; Turf and Grasses
 - 5. Section 329300; Plants

1.3 SUBMITTALS

- A. Upon beginning of maintenance contract, submit a proposed schedule of visit dates and services as outlined herein.
- B. At the beginning of each year, by January 15th, the Contractor shall submit a complete revised yearly schedule of maintenance operations indicating timing of scheduled visits, method of weed control, access, and mobility issues. At the end of each year, by December 1st, the Contractor shall submit a written summary of the year's activities, including: the record of irrigation winterization and start-up; irrigation schedule, repairs and adjustments; herbicide types and applications; water level conditions; repair, replacement, or restoration activities; and any conditions addressed outside of the scheduled tasks specified herein.

1.4 HERBICIDE PROGRAM

- A. Prior to starting herbicide and chemical control programs, submit a monthly herbicide application schedule and application specification as written by manufacturer of herbicide, and a currently licensed herbicide applicator. Notify Owner's Representative of herbicide application type and schedule prior to seasonal application. Submit rates, quantities, and types per Federal, State and Local jurisdictions, per code and submit copies to Owner.

PART 2 - PRODUCTS

2.1 GENERAL

- A. Fertilizer shall be Slow-Release Organic 10-10-5 or 5-15-10 cottonseed meal-based fertilizer or approved equal.
- B. Fertilizer shall be organic base, composed specifically to improve and maintain root and leaf growth in plantings and soil types found on project site.

PART 3 - EXECUTION

3.1 GENERAL

- A. Debris and Trash Removal: Remove all trash and debris from site.

3.2 PLANTING BED MAINTENANCE

- A. Replace all damaged, dead, or dying plants covered by warranty within 30 days of initial identification of condition.
- B. Fertilizing at planting beds: Apply specified organic base commercial fertilizer at manufacturers recommended rate, two times per growing season. First application on March 15 and the final application on June 15. All fertilizer shall be washed off foliage and watered in thoroughly if not watered by normal rainfall. Apply fertilizers specific to acid-loving (ericaceous) plants where appropriate.
- C. Weeding: Maintain clean mulched areas by pulling and removing all weeds. Check weekly during the growing season and at least bi-weekly at other times.
- D. Pruning: Prune to shape plantings as needed or directed to conform to the natural growth patterns. Remove all dead or diseased wood from the plantings.
- E. Retain non-hazardous dead trees or snags. Notify Owner of hazardous dead trees or snags.
- F. Mulching: Keep a three-inch mulch bed of at least a 3-foot diameter around all plants at all times. Rake mulch in early spring before applying new cover to break "crust" of old mulch.
- G. Spraying: Spraying shall occur only by a currently licensed applicator.
- H. Watering: Shall be by specified irrigation program, excepting new plantings or replacement plantings that shall be watered in as planted. Verify balance of watering on new or replacement planting with Owner. Adjust watering schedule or frequency, if evidence of excess puddling or runoff is encountered or if plantings show stress from lack of water.
- I. Winterize or start up irrigation system as specified. Monitor and adjust system as needed.
- J. Remove all debris from site after each visit and dispose legally offsite.

3.3 LAWN REPAIR AREA MAINTENANCE

- A. Start water application as soon as season requires. Apply water in sufficient quantities and at sufficient intervals to maintain lawn in good color and health. Do not allow surface run-off. Cease watering operations when seasonal rains provide ample water to maintain lawn.
- B. Mow at least once per week during the normal growing season to maintain lawn height between 1-1/2 inches (40 mm) to 2-1/2 inches (60 mm). Normal height of cut is 1-1/2 inches (40 mm). Utilize clean, sharp equipment that is cleaned of bacteria, chemicals, fungus etc., prior to use on project site. Remove grass clippings from mowing operations and dispose legally offsite.
- C. Edge beds and lawn perimeters every two weeks, after establishment.
- D. Feed with organic base fertilizer specifically formulated for turf and applying equivalent of four pounds of actual nitrogen per season in a minimum of four applications annually.
- E. Apply herbicide weed control by licensed applicator sufficient to control invasive broadleaf weeds and grasses.

3.4 OTHER SEEDED AREAS

- A. Mow or flail mow areas once yearly.
- B. Until seeded areas are accepted start water application as soon as season requires. Apply water in sufficient quantities and at sufficient intervals to maintain seeded areas in good color and health. Do not allow surface run-off. Cease watering operations when seasonal rains provide ample water to maintain seeded areas.
- C. Do not apply weed control measures in seeded areas.
- D. Re-Seed per original specifications in areas not showing acceptable germination.

3.5 PEDESTRIAN AREAS

- A. Police and sweep pedestrian walkways to maintain clean, safe surfaces, remove accumulated clippings and plant debris from walkways and entrances. Clean all paved surfaces soiled by landscape maintenance operations.

3.6 NATIVE PLANTING MAINTENANCE

- A. Maintain native plantings and seeded areas on an 'as-needed basis' for a period of three years after written approval, per the unit cost bid and included in the contract documents, and per the following task schedule:
 - 1. First Year
 - a. After the site is planted and written approval(s) for plantings has been issued, the Contractor shall conduct weekly visits for the two months after planting, to monitor conditions. The Contractor shall identify detrimental site conditions and

notify the Owner's Representative of such conditions. The contractor shall respond immediately to correct such conditions on an 'hourly time and material' basis.

- b. Each month thereafter, the Contractor shall visit the site once monthly to monitor plantings for the balance of the first year.
- c. Maintenance tasks shall consider, but not be limited to the repair and/or improvement of the following concerns and conditions:
 - 1) Foliage condition
 - 2) Irrigation applications: per specifications
 - 3) Survivability of plants and seeding
 - 4) Animal and fowl
 - 5) Water levels effects: sufficiency, period of inundation, erosion or washing
 - 6) Germination of seeded areas
 - 7) Weed control of invasive plant species. Removal of weed debris and seed sources.
 - 8) Detrimental surface conditions: erosion, slumping, etc.
 - 9) Vandalism.
 - 10) Litter and extraneous debris removal.

2. Second Year

- a. Continue monthly maintenance tasks outlined in first year. Analysis of site and reports shall be consistent with first year methodology.

3. Third Year

- a. Continue monthly maintenance tasks outlined in first year. Analysis of site and reports shall be consistent with first year methodology.

3.7 WEED ERADICATION

- A. Weed Eradication: Shall include eradication by herbicide and non-herbicide methods. Eradication program shall include and is not limited to control of the following noxious species;

Cirsium arvense (Canadian Thistle)
Convolvulus spp. (Morning Glory)
Cytisus scoparius (Scotch Broom)
Dipsacus sylvestris (Common Teasel)
Eichornia crassipes (Water Hyacinth)
Festuca arundinaceae (Tall Fescue)
Hedera helix (English Ivy)
Holcus lanatus (Velvet Grass)
Lolium spp. (Rye Grasses)
Lotus corniculatus (Bird's Foot Trefoil)
Lythrium salicaria (Purple Loose Strife)
Melilotus spp. (Sweet Clover)
Myriophyllum spicatum (Eurasian Milfoil)
Phalaris arundinaceae (Reed Canary Grass)
Rubus discolor (Himalayan Blackberry)

Solanum spp. (Nightshade)
Trifolium spp. (Clovers)
Vicia spp. (Vetches)

Other weeds include:

Clematis. Vitalba (old man's beard)
Crataegus laevigata (English hawthorn)

Herbicide application shall be by manual 'spot spraying', wicking, or backpack methods per manufacturer's specifications. Herbicide in the Water Quality Resource Areas as designated by Oregon City shall be subject to approval and be strictly applied by manufacturer's specifications.

- B. Selective hand removal by non-herbicide methods shall be utilized if herbicide application threatens native plantings. All native plantings indicating damage by herbicide application shall be replaced immediately at no additional cost to the Owner.
- C. Protect the site and the Water Quality Resource Areas as designated by Oregon City at all times from erosion and siltation. Utilize all approved erosion control methods to contain and mitigate erosion. The Contractor shall inspect the site at sufficient intervals throughout the maintenance monitoring program, during wet periods of weather to identify potential erosion problems which shall be brought to the attention of the Owner's Representative immediately. Replace plant and seeding material per directives of the Owner's Representative, damaged by erosion per the original planting and seeded specifications.

3.8 IRRIGATION SYSTEM INSPECTION AND MAINTENANCE

- A. The Contractor shall irrigate to maintain all plantings in a healthy, thriving condition.
- B. Start irrigation when plants require supplemental water due to dry weather, depleting available soil moisture.
- C. Flush and winterize system by November 1, or earlier if weather exhibits threat of freezing. Verify that system is free of water in all components subject to freeze damage.
- D. Provide yearly backflow prevention inspections and certificates to Owner's representative, as required by code.
- E. Adjust nozzles, heads, valves, and controller operation to provide a consistent water application avoiding over-saturation or under watering throughout native planting areas.
- F. Notify Owner's representative of system inadequacies that cannot be addressed by adjustment.

PART 4 - MEASUREMENT AND PAYMENT

4.1 PAYMENT SCHEDULE

- A. Unit of Measurement and Payment for all items required for Native Planting Area Maintenance shall be based on the Lump Sum or unit prices as set forth in the Contractor's Proposal.
- B. The pay items will be as follows:

	Pay Item	Unit of Measurement
(a)	General Inspection and Reporting	LUMP SUM PER YEAR
(b)	Temporary Irrigation System Inspection & Maintenance	LUMP SUM PER YEAR
(c)	Three Year Native Planting Area Maintenance Program	LUMP SUM PER YEAR

- C. The bid item has associated incidental work. Work not listed on bid schedule, but necessary for completion of work specified herein shall be considered incidental and shall not relieve Contractor from the responsibility of completing incidental work.
- D. Payment for (b) & (c) includes any work, materials, tools, and labor not listed separately in the Contractor's Proposal.

END OF SECTION 329310

WATER ENVIRONMENT SERVICES

Tri-City Water Resource Recover Facility

100% DESIGN
DATE: SEPT 3, 2020

PROJECT DIRECTORY

OWNER/CONTACT

Clackamas WES
150 Beavercreek Rd.
Oregon City, OR 972045
PHONE: 503-742-4597
PROJECT CONTACT: Jeff Stallard
EMAIL: jstallard@clackamas.us

LANDSCAPE ARCHITECT

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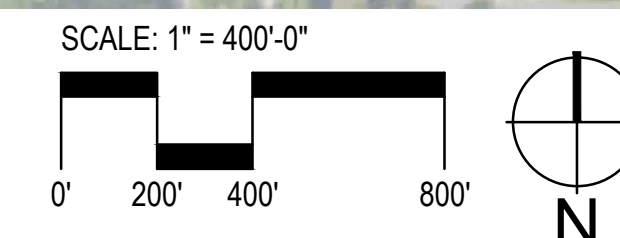
SURVEY

RON BUSH ENGINEERING SURVEYING PC
1615 SE BLUFF ROAD
SANDY, OR 97055
PHONE: 503-668-8265

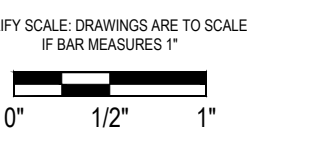
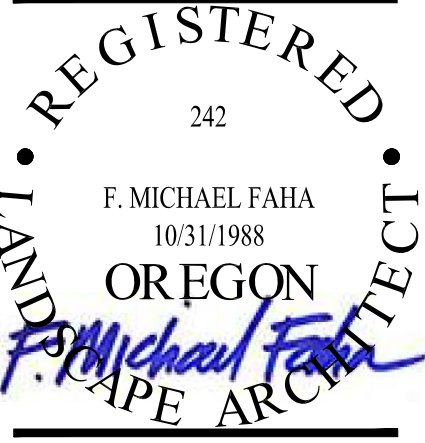
SHEET INDEX

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L1.1	PLANTING PLAN - NORTH
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L2.0	IRRIGATION SCHEDULE AND NOTES
L2.1	IRRIGATION PLAN - NORTH
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L3.0	DETAILS - PLANTING
L3.1	DETAILS - IRRIGATION

VICINITY MAP



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Landscape Architecture
Environmental Design
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Email: info@greenworkspc.com



Project:
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Water Environment Services
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Oregon City, OR 97045
Phone #
Email

Submital: Bid Set
Sheet Title:
COVER SHEET

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Date: 09/03/2020
Revisions:

Drawn By: VS
Checked By: JD, DW
Job No. 200011.1
Approved: MF

G0.0
Sheet No. 1 of 13

GENERAL NOTES

- SURVEY INFORMATION:
HORIZONTAL DATUM: NAD83 (2011), EPOCH 2010, GRS 80, INT'L FEET.
VERTICAL DATUM: GEOID 12A, NAVD 88, US FEET.
PROJECTION: THE OREGON STATE PLANE COORDINATE SYSTEM (NORTH).
- ALL WORK PERFORMED IN CONNECTION WITH THE CONTRACT DOCUMENTS, INCLUDING MATERIALS FURNISHED, WORKMANSHIP, AND MEANS AND METHODS OF CONSTRUCTION SHALL CONFORM TO THE LATEST STANDARDS, PRACTICES AND REQUIREMENTS OF THE APPLICABLE FEDERAL, STATE AND LOCAL AUTHORITIES.
- IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY ALL UTILITY LOCATIONS, DEPTHS AND ELEVATIONS PRIOR TO CONSTRUCTION AND ARRANGE FOR THE RELOCATION OF ANY IN CONFLICT WITH ALL CONSTRUCTION ACTIVITIES. THE LOCATIONS AND IDENTIFICATION OF UTILITIES WITHIN THIS DOCUMENT IS FOR INFORMATION ONLY AND IS NOT GUARANTEED TO BE ACCURATE. ANY DISCREPANCIES BETWEEN SURVEY INFORMATION AND FIELD CONDITIONS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER'S REPRESENTATIVE IMMEDIATELY.
- IT SHALL BE UNDERSTOOD THAT THE IMPROVEMENTS SHOWN ON THE DRAWINGS AND SPECIFICATIONS ARE MEANT TO COMPLY WITH ALL APPLICABLE CODES AND ORDINANCES. MODIFICATIONS, CONFLICTS, OR ISSUES THAT ARISE THAT WOULD CONTRADICT RELEVANT CODES AND ORDINANCES SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER'S REPRESENTATIVE IMMEDIATELY.
- COMPLY WITH OREGON LAW REQUIRING ADHERENCE TO THE RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. NOTIFY THE OREGON UTILITY NOTIFICATION CENTER AT LEAST 2 BUSINESS DAYS, BUT NOT MORE THAN 10 BUSINESS DAYS, BEFORE COMMENCING AN EXCAVATION. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090 AND ORS 757.541 TO 757.57. PHONE CONTACT FOR THE OREGON UTILITY NOTIFICATION CENTER IS 1-800-332-2344 (or 811).
- REPAIR AT OWN EXPENSE ANY DAMAGE DONE TO UTILITY SYSTEMS, SURFACE PAVEMENTS, SITE FEATURES, AND STRUCTURES, WHETHER INSIDE OR OUTSIDE OF THE PROJECT LIMITS, THAT ARE NOT DIRECTLY INDICATED TO BE REMOVED OR RELOCATED AS PART OF THE PROJECT CONSTRUCTION.
- ALL QUANTITIES SHOWN ON THE DRAWINGS OR SPECIFICATIONS ARE FOR CONVENIENCE ONLY.
- UPON PROJECT COMPLETION, THE PROJECT AREA AND ADJACENT SPACES SHALL BE FREE AND CLEAR OF ALL CONSTRUCTION MATERIALS, WASTE AND DEBRIS. CONTRACTOR SHALL REMOVE AND PROPERLY DISPOSE OF ALL MATERIALS AS INDICATED IN THE PROJECT CONTRACT DOCUMENTS AND MUST MEET ALL APPLICABLE REGULATIONS OVERSEEING WASTE DISPOSAL.

GENERAL LEGEND

- PROJECT LIMIT OF WORK
- WATER QUALITY RESOURCE AREA (WQRA) 200-FT BUFFER
- CHAINLINK FENCE
- OVERHEAD POWER LINE
- ELECTRIC LINE
- STORM DRAIN LINE
- DITCH
- 1-FT CONTOUR
- CONCRETE PAVING
- ASPHALT
- GRAVEL
- RIPRAP
- EXISTING DECIDUOUS TREE
- EXISTING CONIFER TREE
- EXISTING CONIFER TREE - DEAD
- EXISTING SNAG OR STUMP
- EXISTING IRRIGATION HEAD
- EXISTING IRRIGATION VAULT
- UTILITY POLE

TABLE OF ABBREVIATIONS

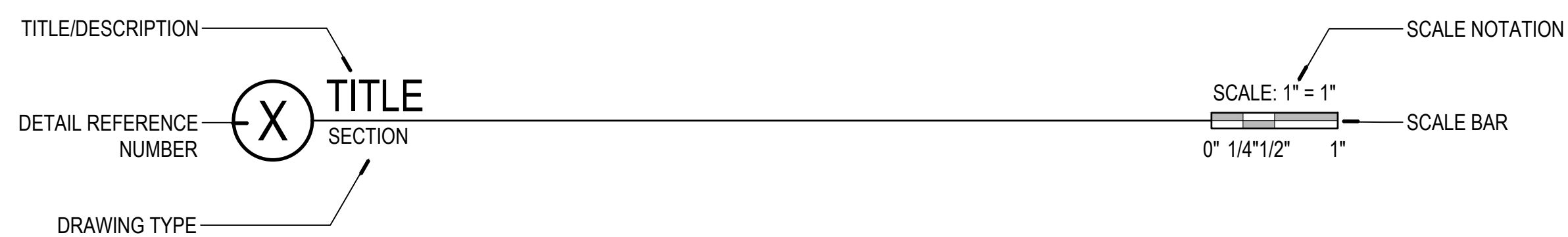
NOTE: NOT ALL ABBREVIATIONS REFERENCED IN DRAWINGS. ABBREVIATIONS MAY BE SHOWN WITH OR WITHOUT PERIODS.

@	ALUM	APPROX	ARCH	AC	BC	B&B	BLDG	BM	BPRD	BS	BR	BOW	BW	CB	CF	CAL	CJ	CLR	CIP	CONT	CL / €	CP	CT	DIM	DIA	DEMO	DOM	(E)	EA	EJ	ELC	ELEV	ENG	EOP	EQ	EST	FB	FD	FG	FL	FOC	FTG	GALV	GA	GFI	GB	GND	HDG	HMAC	MHMAC	HORIZ	HP	HSS	ID	IE	INT	IR	JT	LT	LF	LP	AT	ALUMINUM	APPROXIMATE	ARCHITECT	ASPHALT CONCRETE	BOTTOM OF CURB	BALLED AND BURLAP	BUILDING	BENCHMARK	BEND PARKS & RECREATION DISTRICT	BOTTOM OF STAIR	BOTTOM OF RAMP	BOTTOM OF WALL (ELEV. BELOW FINISH GRADE)	BOTTOM OF WALL (ELEV. AT FINISH GRADE)	CATCH BASIN	CUBIC FEET	CALIPER	CONTRACTION JOINT	CLEAR	CAST-IN-PLACE	CONTAINER / CONTINUOUS	CENTER LINE	CENTER POINT	CURRENT TRANSFORMER	DIMENSION	DIAMETER	DEMOLISH	DOMESTIC WATER LINE	EXISTING	EACH	EXPANSION JOINT	EXTERIOR LIGHTING CONTROL	ELEVATION	ENGINEER	EDGE OF PAVEMENT	EQUAL	ESTIMATE	FLAT BAR	FIELD DRAIN	FINISH GRADE	FLOW LINE	FACE OF CURB	FOOTING	GALVANIZED	GAUGE	GROUND FAULT INTERRUPTER	GROUND BREAK	GROUND	HOT DIP GALVANIZED	HOT MIX ASPHALT CONCRETE	MINOR HOT MIX ASPHALT CONCRETE	HORIZONTAL	HIGH POINT	HOLLOW STRUCTURAL SECTION	INSIDE DIAMETER	INVERT ELEVATION	INTERMEDIATE	IRON ROD	JOINT	LEFT	LINEAR FEET	LOW POINT	MAX	MINIMUM	MANHOLE	NOT IN CONTRACT	NOMINAL	NOMINAL PIPE SIZE	NOT TO SCALE	OVER HEAD	ON CENTER	OUTSIDE DIAMETER	OWNER FURNISHED CONTRACTOR INSTALLED	PLANTING AREA	POINT OF CURVATURE	POINT OF COMPOUND CURVATURE / PORTLAND CEMENT CONCRETE	POINT OF INTERSECTION	POURED-IN-PLACE	PLATE	PURE LIVE SEED	POINT OF TANGENCY	PRESSURE TREATED	PERFERATED	POINT KNOWN	POWER POLE	POLYVINYL CHLORIDE PIPE	RADIUS	REFERENCE	REINFORCED / REINFORCEMENT	REQUIRED	RIGHT-OF-WAY	ROOT PROTECTION ZONE	RIGHT	SANITARY	SD	SECONDARY	SIMILAR	SANITARY SEWER	STAINLESS STEEL	STATION	STANDARD	STRUCTURAL	TRENCH DRAIN	TELEPHONE	THICK	TOPOGRAPHY	TOP OF CURB	TOP OF RAMP	TOP OF STAIR	TREE PROTECTION ZONE	TYPICAL	TOP OF WALL	UNDERGROUND	VARIES	VOLUME	WITH	WITHOUT	WATER METER	WORK POINT	WEIGHT	WELDED WIRE MESH	YARD
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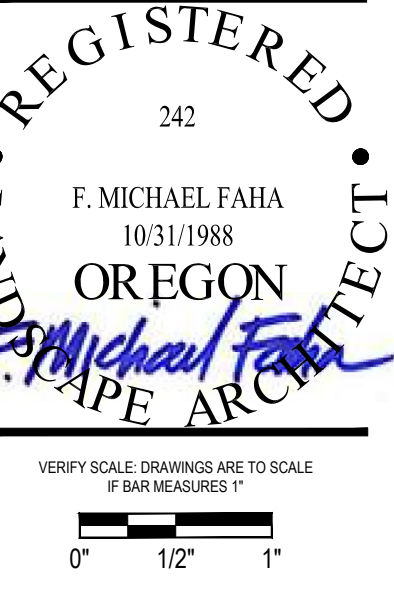
SYMBOLS LEGEND

- | SYMBOL | ITEM |
|---------------------------|-------------------------------------|
| XXX ——— | LEADER LABEL |
| TYP ① ——— | REFERENCE KEYNOTE |
| XXX (X) LX.XX ——— | DETAIL REFERENCE |
| (X) LX.XX ——— | ELEVATION DETAIL REFERENCE |
| (X) LX.XX ——— | SECTION DETAIL REFERENCE |
| (X) ——— | SECTION REFERENCE (WITHIN DETAIL) |
| (X) ——— | ELEVATION REFERENCE (WITHIN DETAIL) |
| (X) LX.XX ——— | ENLARGEMENT REFERENCE |
| 1'-0" | LINEAR DIMENSION |
| R=3" | RADIUS DIMENSION |
| 90° | ANGLE DIMENSION |
| MATCHLINE SEE SHEET LX.XX | SHEET MATCHLINE |
| SCALE: 1" = 10'-0" | SCALE BAR |
| NORTH | NORTH ARROW |
| # (X) ——— | REVISION TRIANGLE AND CLOUD |
| LIMIT OF WORK | LIMIT OF WORK LINE |

DETAIL FRAME LEGEND



GreenWorks, P.C.
Landscape Architecture
Environmental Design
24 NW 2nd Avenue, Suite 100
Portland, Oregon 97209
Ph: 503.222.5612 / Fax: 503.222.2283
Email: info@greenworkspc.com



Project: **Tri-City WRRF Planting Mitigation**
 Water Environment Services
 130 Beavercreek Road
 Oregon City, OR 97145
 Phone #
 Email

Submittal: **Bid Set**
 Sheet Title: **GENERAL NOTES AND LEGEND**

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Date: 09/03/2020

Revisions:

Drawn By: VS
Checked By: JD, DW
Job No. 200011.1
Approved: MF

G0.1

Sheet No. 2 of 13

3:\PROJECTS\200011_1_LWS_TRI-CITY_WWRF02_PRODUCTION\01_CAD\01_PLOT_SHEETS\200011_1_EXIST_COND.DWG



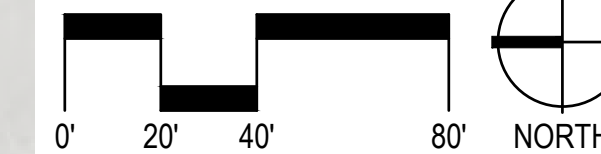
LEGEND

- PROJECT LIMIT OF WORK
- WATER QUALITY RESOURCE AREA (WQRA) 200-FT BUFFER
- x-x-x- CHAINLINK FENCE
- OP OVERHEAD POWER LINE
- E ELECTRIC LINE
- ST STORM DRAIN LINE
- < DITCH
- 1-FT CONTOUR
- [Pattern] CONCRETE PAVING
- [Pattern] GRAVEL
- [Pattern] EXISTING RIPRAP
- [Pattern] EXISTING UNDERSTORY VEGETATION AT WEST SIDE
- (Circle) EXISTING DECIDUOUS TREE
- (Star) EXISTING CONIFER TREE
- (Star) EXISTING CONIFER TREE - DEAD
- (X) EXISTING SNAG OR STUMP

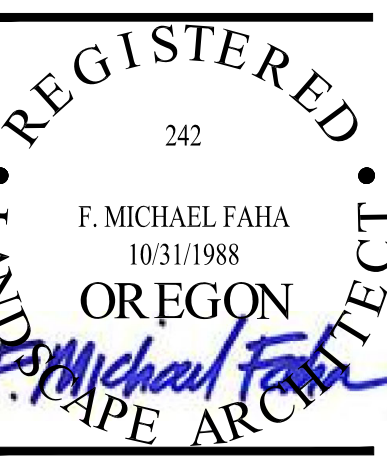
EXISTING CONDITIONS KEYNOTES

- ① PUBLIC RECREATION TRAIL
- ② DETENTION POND
- ③ PGE MARKERS - TO REMAIN
- ④ IRRIGATION VAULT
- ⑤ GATE, WIDTH VARIES
- ⑥ STORMWATER DRAIN
- ⑦ IRRIGATION HEAD
- ⑧ UTILITY POLE
- ⑨ GRAVEL ACCESS ROAD

SCALE: 1" = 40'-0"



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Email: info@greenworkspc.com



VERIFY SCALE: DRAWINGS ARE TO SCALE
IF BAR MEASURES 1"
0" 1/2" 1"



Project:
Tri-City WRRF Planting Mitigation

Water Environment Services
130 Beechcreek Road
Portland, OR 97045
Phone #
Email

Submital: Bid Set

Sheet Title:

**EXISTING
CONDITIONS
PLAN**

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Date: 09/03/2020

Revisions:

Drawn By: VS
Checked By: JD, DW
Job No. 200011.1
Approved: MF

L0.0

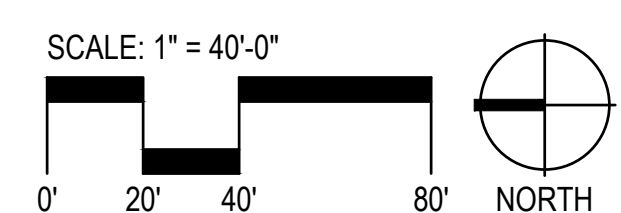
Sheet No. 3 of 13

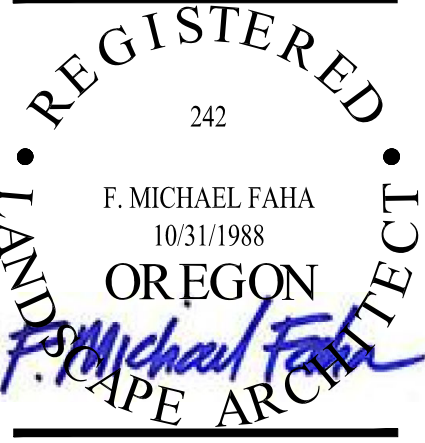
LEGEND

- PROJECT LIMIT OF WORK
- WATER QUALITY RESOURCE AREA (WQRA) 200-FT BUFFER
- x-x-x- EXISTING CHAINLINK FENCE
- o-o-o- SEDIMENT FENCE SEE DETAIL 1/L3.0
- OP OVERHEAD POWER LINE
- E ELECTRIC LINE
- ST STORM DRAIN LINE
- [Cross-hatch pattern] WEED ERADICATION AREA SEE SPECIFICATIONS
- [Diagonal line pattern] STAGING AND SOIL STOCKPILE AREA SEE SPECIFICATIONS
- [Stippled pattern] EXISTING RIPRAP
- EXISTING TREES TO PROTECT
- ★ EXISTING CONIFER TREE - DEAD
- ⊗ EXISTING SNAG OR STUMP SEE SPECIFICATIONS
- ✕ EXISTING TREE TO BE REMOVED SEE SPECIFICATIONS

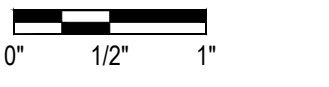
DEMOLITION KEYNOTES

- ① MAINTAIN 6-FT SEEDED LAWN AREA ALONG FENCE LINE. REPAIR TO EXISTING CONDITION IF DISTURBED.
- ② PGE MARKERS TO BE PROTECTED
- ③ EXISTING IRRIGATION EQUIPMENT TO BE PROTECTED SEE SPECIFICATIONS
- ④ STORM DRAIN TO BE PROTECTED





VERIFY SCALE: DRAWINGS ARE TO SCALE
IF BAR MEASURES 1"



Project: Tri-City WRRF Planting Mitigation
Water Environment Services
130 Beavercreek Road
Oregon City, OR 97046
Phone #
Email

Submittal: Bid Set
Sheet Title: **PLANTING SCHEDULE AND NOTES**

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Date: 09/03/2020

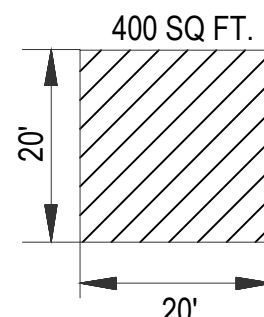
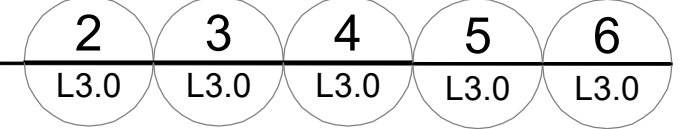
Revisions:

Drawn By: VS
Checked By: JD, DW
Job No: 200011.1
Approved: MF

L1.0

Sheet No. 5 of 13

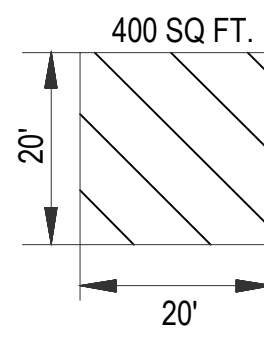
PLANTING SCHEDULE



ZONE 1: MIXED DECIDUOUS-CONIFER FOREST (15,100 SQUARE FEET = 38 PLOTS)

BOTANICAL NAME	COMMON NAME	SIZE & TYPE	QTY./PLOT	QTY.	NOTES
OVERSTORY:					
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	5' HT. B&B	1	38	
RHAMNUS PURSHIANA	CASCARA	1.5" CAL B&B	1	38	
TSUGA HETEROPHYLLA	WESTERN HEMLOCK	5' HT. B&B	1	38	
UNDERSTORY:					
CORNUS SERICEA	RED OSIER DOGWOOD	2 GAL CONT.	2	76	
OEMLERIA CERASIFORMIS	INDIAN PLUM	2 GAL CONT.	3	114	
PHYSOCARPUS CAPITATUS	PACIFIC NINEBARK	2 GAL CONT.	2	76	
RIBES SANGUINEUM	RED CURRANT	2 GAL CONT.	4	152	
SAMBUCUS RACEMOSA	RED ELDERBERRY	2 GAL CONT.	2	76	
SYMPHORICARPOS MOLLIS	CREEPING SNOWBERRY	2 GAL CONT.	4	152	

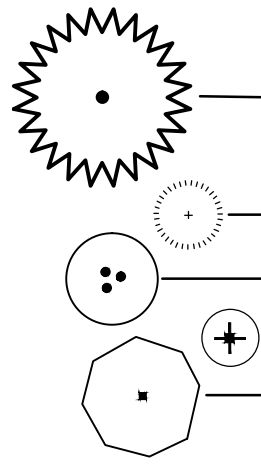
BOTANICAL NAME	COMMON NAME	TYPE	LBS/1000SF	QTY.
GROUND LAYER:				
SEED MIX 1 - SUNMARK NATIVE SEED MIX 'NATIVE RIPARIAN'			1.0	16 LBS
* TO BE APPLIED BETWEEN ALL PLANTS IN PLANTING ZONE 1 TO ACHIEVE FULL COVERAGE.				
BROMUS CARINATUS	CALIFORNIA BROME	SEED		
ELYMUS GLAUCUS	BLUE WILDRYE	SEED		
HORDEUM BRACHYANTHERUM	MEADOW BARLEY	SEED		



ZONE 2: WEED ERADICATION EROSION CONTROL SEEDING (25,000 SQUARE FEET = 63 PLOTS)

BOTANICAL NAME	COMMON NAME	TYPE	LBS/1000SF	QTY.
GROUND LAYER:				
SEED MIX 1 - SUNMARK NATIVE SEED MIX 'NATIVE RIPARIAN'			1.0	25 LBS
* TO BE APPLIED BETWEEN ALL PLANTS IN PLANTING ZONE 2 TO ACHIEVE FULL COVERAGE.				
BROMUS CARINATUS	CALIFORNIA BROME	SEED		
ELYMUS GLAUCUS	BLUE WILDRYE	SEED		
HORDEUM BRACHYANTHERUM	MEADOW BARLEY	SEED		

EVERGREEN SCREENING (8,140 SF)



BOTANICAL NAME	COMMON NAME	SIZE & TYPE	QTY.	NOTES
OVERSTORY:				
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	5' HT. B&B	6	
UNDERSTORY:				
CORNUS SERICEA	RED OSIER DOGWOOD	2 GAL CONT.	8	
GARRYA FREMONTII	MOUNTAIN SILK TASSEL	2 GAL CONT.	29	
MAHONIA AQUIFOLIUM	TALL OREGON GRAPE	2 GAL CONT.	35	
MYRICA CALIFORNICA	PACIFIC WAX MYRTLE	2 GAL CONT.	16	
BOTANICAL NAME	COMMON NAME	TYPE	LBS/1000SF	QTY.
GROUND LAYER:				
SEED MIX 2 - SUNMARK NATIVE SEED MIX 'NATIVE UPLAND'			1.0	9 LBS
* TO BE APPLIED BETWEEN ALL PLANTS IN SCREENING AREA TO ACHIEVE FULL COVERAGE.				
AGROSTIS EXARATA	SPIKE BENTGRASS	SEED		
BROMUS CARINATUS	CALIFORNIA BROME	SEED		
ELYMUS GLAUCUS	BLUE WILDRYE	SEED		
FESTUCA RUBRA RUBRA	NATIVE RED FESCUE	SEED		

REQUIRED AND PROPOSED MITIGATION PLANTINGS

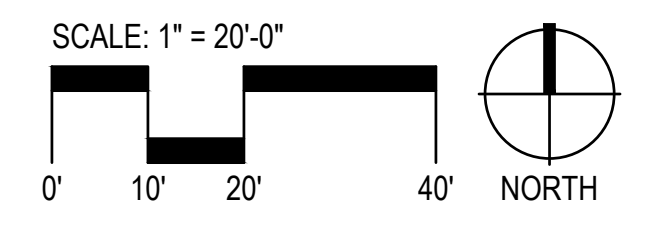
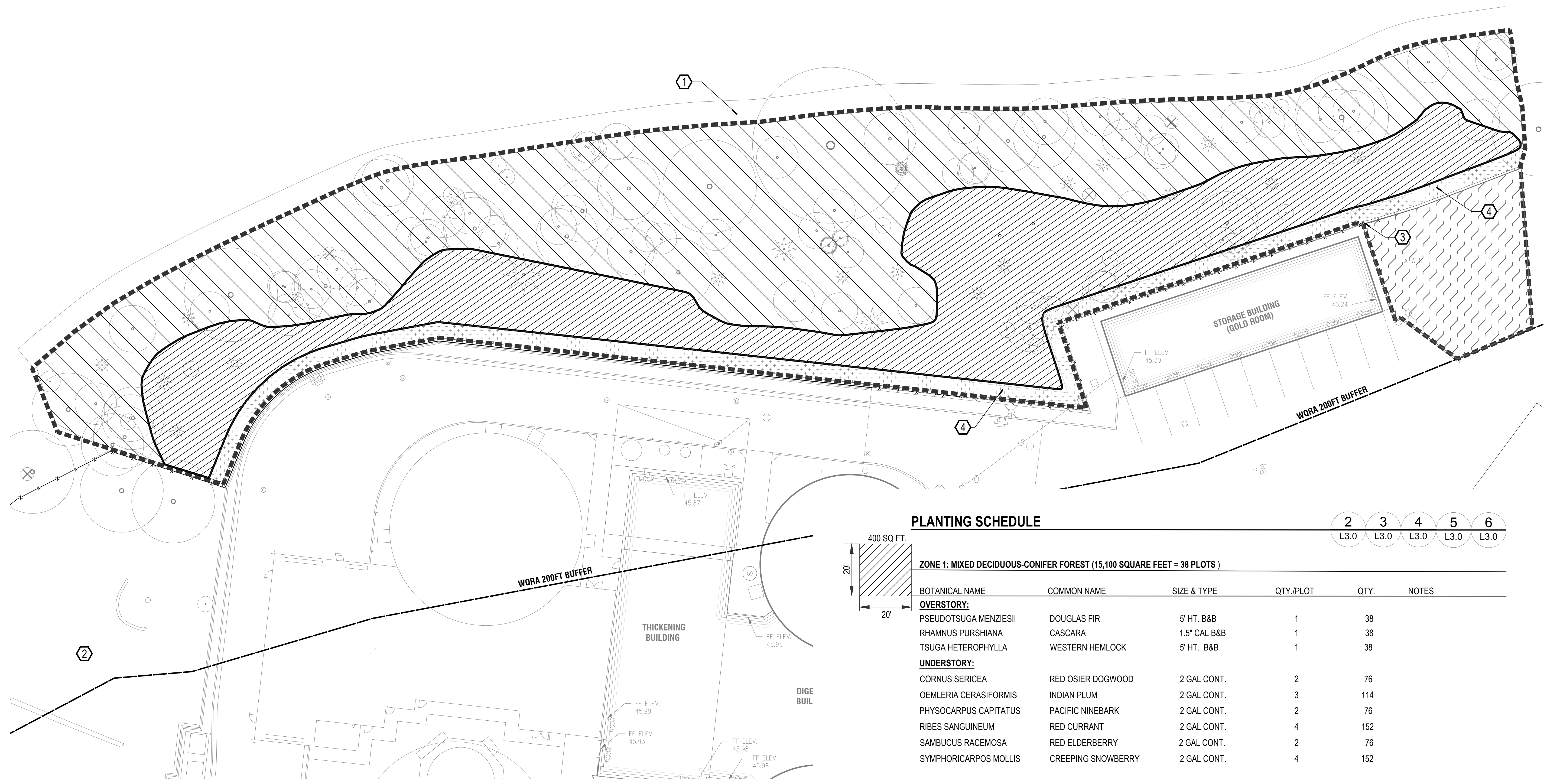
	REQUIRED MITIGATION	PROPOSED MITIGATION
SF	11,309 SF	15,100 SF
TREE	Oregon City - 79 City of Gladstone - 21 Total - 100	114
SHRUB	Oregon City - 395 City of Gladstone - 105 Total - 500	646

MASTER PLANT LIST

BOTANICAL NAME	COMMON NAME	SIZE & TYPE	QTY.	NOTES
CANOPY:				
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	5' HT. B&B	44	
RHAMNUS PURSHIANA	CASCARA	1.5" CAL. B&B	38	
TSUGA HETEROPHYLLA	WESTERN HEMLOCK	5' HT. B&B	38	
UNDERSTORY:				
CORNUS SERICEA	RED OSIER DOGWOOD	2 GAL CONT.	84	
GARRYA FREMONTII	MOUNTAIN SILK TASSEL	2 GAL CONT.	29	
MAHONIA AQUIFOLIUM	TALL OREGON GRAPE	2 GAL CONT.	35	
MYRICA CALIFORNICA	PACIFIC WAX MYRTLE	2 GAL CONT.	16	
OEMLERIA CERASIFORMIS	INDIAN PLUM	2 GAL CONT.	114	
PHYSOCARPUS CAPITATUS	PACIFIC NINEBARK	2 GAL CONT.	76	
RIBES SANGUINEUM	RED CURRANT	2 GAL CONT.	152	
SAMBUCUS RACEMOSA	RED ELDERBERRY	2 GAL CONT.	76	
SYMPHORICARPOS MOLLIS	CREEPING SNOWBERRY	2 GAL CONT.	152	
GROUND LAYER:				
SEED MIX #1	SUNMARK 'NATIVE RIPARIAN'		41 LBS	
SEED MIX #2	SUNMARK 'NATIVE UPLANDS'		9 LBS	

PLANTING NOTES

- PRIOR TO INSTALLATION OF PLANT MATERIAL, ALL INVASIVE VEGETATION WITHIN THE SELECTED PROJECT AREAS SHALL BE REMOVED BY MANUAL METHODS (CUT, MOW, SHADE, SMOTHER, HAND PULL) OR CHEMICAL (SPOT OR AREA APPLICATION). DURING REMOVAL OF INVASIVE VEGETATION CARE SHALL BE TAKEN TO MINIMIZE IMPACTS TO EXISTING NATIVE TREES AND SHRUBS.
- ZONE 2 PLANTING AREA TO RECEIVE TEMPORARY EROSION CONTROL SEED. SEE SPECIFICATIONS.
- CONTRACTOR SHALL PROVIDE MULCH TO THE COMPOSITION AND DEPTHS IN ACCORDANCE WITH THE DETAILS AND SPECIFICATIONS OF THE CONTRACT DOCUMENTS.
- ALL PLANTS SHALL BE INSTALLED IN ACCORDANCE WITH THE DETAILS AND THE SPECIFICATIONS PROVIDED AS PART OF THE CONTRACT DOCUMENTS.
- QUANTITIES ARE LISTED FOR THE CONTRACTOR'S CONVENIENCE ONLY. ALL COUNTS MUST BE VERIFIED BY THE CONTRACTOR. IN THE CASE OF A DISCREPANCY BETWEEN THE LEGEND AND THE PLAN, PLANTS INDICATED ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN THE LEGEND.
- UTILITY LOCATIONS SHOWN ON PLANS MAY DIFFER FROM FIELD CONDITIONS. CONTRACTOR TO FIELD VERIFY ALL UTILITIES BEFORE INSTALLATION. CONFLICTS BETWEEN ANY EXISTING AND PROPOSED UTILITIES ARE TO BE BROUGHT TO THE ATTENTION OF THE OWNER'S REPRESENTATIVE IMMEDIATELY.
- ALL TREES AND SHRUBS PLANTED IN THE UPLAND AREA ARE TO BE MULCHED A MINIMUM OF THREE INCHES IN DEPTH. APPROPRIATE MULCHES INCLUDE THOSE MADE FROM COMPOSTED LEAVES OR BARK THAT HAVE NOT BEEN CHEMICALLY TREATED.



KEY NOTES

- 1 PUBLIC RECREATION TRAIL
- 2 DETENTION POND
- 3 GATE - WIDTH VARIES
- 4 PRESERVE LAWN ALONG EXISTING FENCE LINE AND RESTORE IF DAMAGED.

SHEET NOTES

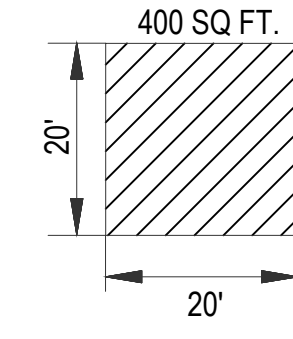
1. SEE SHEET G0.1 FOR GENERAL LEGEND AND NOTES
2. SEE SHEET L1.0 FOR PLANTING PLAN LEGEND AND NOTES
3. ALL TREES AND SHRUBS ARE TO BE MULCHED A MINIMUM OF THREE INCHES IN DEPTH AND THREE FEET IN DIAMETER.

LEGEND

- PROJECT LIMIT OF WORK
- ZONE 1: MIXED DECIDUOUS-CONIFER FOREST
- ZONE 2: WEED ERADICATION EROSION CONTROL SEEDING
- EXISTING LAWN TO REMAIN. REPAIR TO PREVIOUS CONDITION IF DISTURBED.
- STAGING AND SOIL STOCKPILE AREA
- EXISTING TREES
- SNAG OR STUMP

PLANTING SCHEDULE

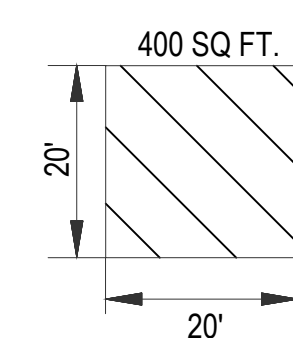
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L3.0	L3.0	L3.0	L3.0	L3.0



ZONE 1: MIXED DECIDUOUS-CONIFER FOREST (15,100 SQUARE FEET = 38 PLOTS)

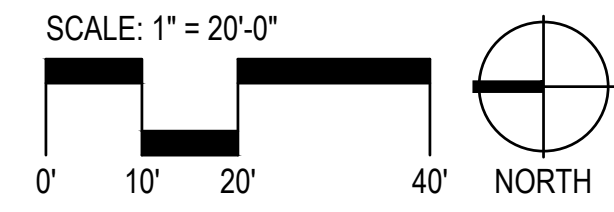
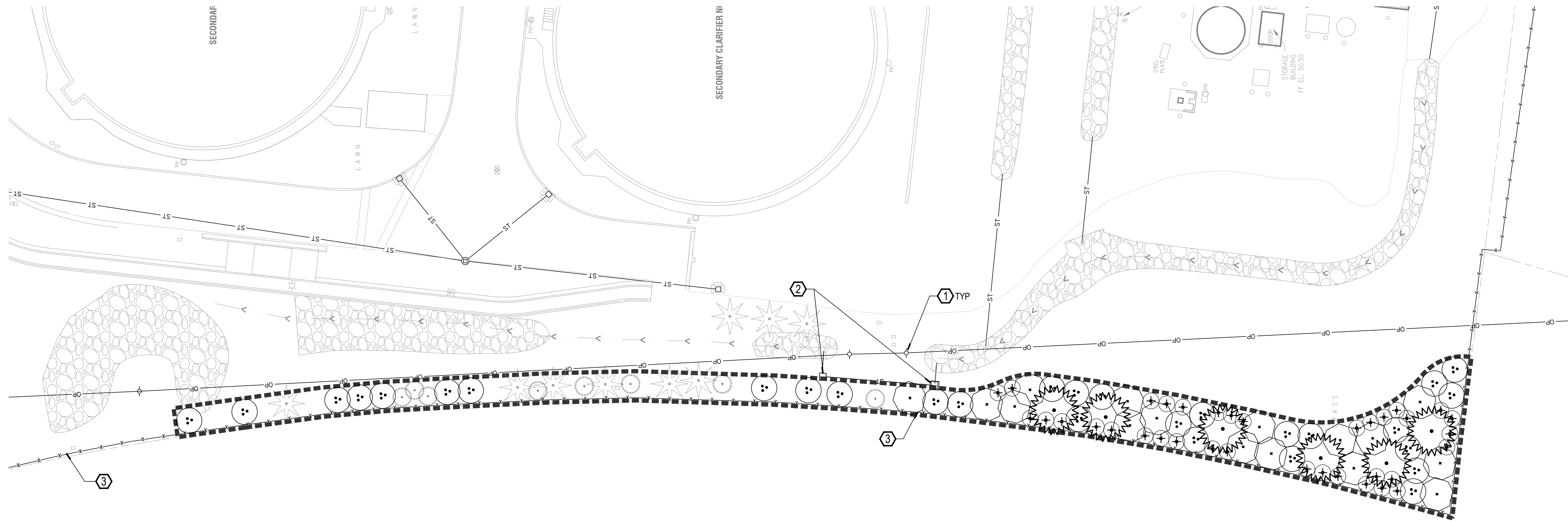
BOTANICAL NAME	COMMON NAME	SIZE & TYPE	QTY./PLOT	QTY.	NOTES
OVERSTORY:					
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	5' HT. B&B	1	38	
RHAMNUS PURSHIANA	CASCARA	1.5" CAL B&B	1	38	
TSUGA HETEROPHYLLA	WESTERN HEMLOCK	5' HT. B&B	1	38	
UNDERSTORY:					
CORNUS SERICEA	RED OSIER DOGWOOD	2 GAL CONT.	2	76	
OEMLERIA CERASIFORMIS	INDIAN PLUM	2 GAL CONT.	3	114	
PHYSOCARPUS CAPITATUS	PACIFIC NINEBARK	2 GAL CONT.	2	76	
RIBES SANGUINEUM	RED CURRANT	2 GAL CONT.	4	152	
SAMBUCUS RACEMOSA	RED ELDERBERRY	2 GAL CONT.	2	76	
SYMPHORICARPOS MOLLIS	CREEPING SNOWBERRY	2 GAL CONT.	4	152	

BOTANICAL NAME	COMMON NAME	TYPE	LBS/1000SF	QTY.
GROUND LAYER:				
SEED MIX 1 - SUNMARK NATIVE SEED MIX 'NATIVE RIPARIAN'			1.0	16 LBS
* TO BE APPLIED BETWEEN ALL PLANTS IN PLANTING ZONE 1 TO ACHIEVE FULL COVERAGE.				
BROMUS CARINATUS	CALIFORNIA BROME	SEED		
ELYMUS GLAUCUS	BLUE WILDRYE	SEED		
HORDEUM BRACHYANTHERUM	MEADOW BARLEY	SEED		



ZONE 2: WEED ERADICATION EROSION CONTROL SEEDING (25,000 SQUARE FEET = 63 PLOTS)

BOTANICAL NAME	COMMON NAME	TYPE	LBS/1000SF	QTY.
GROUND LAYER:				
SEED MIX 1 - SUNMARK NATIVE SEED MIX 'NATIVE RIPARIAN'			1.0	25 LBS
* TO BE APPLIED BETWEEN ALL PLANTS IN PLANTING ZONE 2 TO ACHIEVE FULL COVERAGE.				
BROMUS CARINATUS	CALIFORNIA BROME	SEED		
ELYMUS GLAUCUS	BLUE WILDRYE	SEED		
HORDEUM BRACHYANTHERUM	MEADOW BARLEY	SEED		



KEY NOTES

- ① UTILITY POLE
- ② STORMWATER DRAIN
- ③ GATE - WIDTH VARIES

SHEET NOTES

1. SEE SHEET G0.1 FOR GENERAL LEGEND AND NOTES
2. SEE SHEET L1.0 FOR PLANTING PLAN LEGEND AND NOTES
3. ALL TREES AND SHRUBS ARE TO BE MULCHED A MINIMUM OF THREE INCHES IN DEPTH AND THREE FEET IN DIAMETER.

LEGEND

- PROJECT LIMIT OF WORK
- OVERHEAD POWER LINE
- STORM DRAIN LINE
- DITCH
- EXISTING RIPRAP
- EXISTING TREES

PLANTING SCHEDULE

EVERGREEN SCREENING (8,140 SF)

BOTANICAL NAME	COMMON NAME	SIZE & TYPE	QTY.	NOTES
OVERSTORY:				
PSEUDOTSUGA MENZIESII	DOUGLAS FIR	5' HT. B&B	6	
UNDERSTORY:				
CORNUS SERICEA	RED OSIER DOGWOOD	2 GAL CONT.	8	
GARRYA FREMONTII	MOUNTAIN SILK TASSEL	2 GAL CONT.	29	
MAHONIA AQUIFOLIUM	TALL OREGON GRAPE	2 GAL CONT.	35	
MYRICA CALIFORNICA	PACIFIC WAX MYRTLE	2 GAL CONT.	16	

BOTANICAL NAME	COMMON NAME	TYPE	LBS/1000SF	QTY.
GROUND LAYER:				
SEED MIX 2 - SUNMARK NATIVE SEED MIX 'NATIVE UPLAND'			1.0	9 LBS

* TO BE APPLIED BETWEEN ALL PLANTS IN SCREENING AREA TO ACHIEVE FULL COVERAGE.

AGROSTIS EXARATA	SPIKE BENTGRASS	SEED
BROMUS CARINATUS	CALIFORNIA BROME	SEED
ELYMUS GLAUCUS	BLUE WILD RYE	SEED
FESTUCA RUBRA RUBRA	NATIVE RED FESCUE	SEED

2
L3.0

5
L3.0

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REGISTERED
 LANDSCAPE ARCHITECT
 242
 F. MICHAEL FAHA
 10/31/1988
 OREGON
 P. Michael Fahha
 VERIFY SCALE: DRAWINGS ARE TO SCALE
 IF BAR MEASURES 1"

CLACKAMAS
 WATER ENVIRONMENT
 SERVICES

Project: **Tri-City WRRF Planting Mitigation**

Water Environment Services
 130 Beaver Creek Road
 Oregon City, OR 97145
 Phone #
 Email

Submital: Bid Set
 Sheet Title: **PLANTING PLAN - WEST**

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Date: 09/03/2020
 Revisions:

Drawn By: VS
 Checked By: JD, DW
 Job No. 200011.1
 Approved: MF

L1.2
 Sheet No. 7 of 13

3:\PROJECTS\200011.1\WEB_TRI-CITY_WRRF02_PRODUCTION\01_CAD\01_PLOT_SHEET\200011.1_PLANT_PLAN.DWG

IRRIGATION GENERAL NOTES

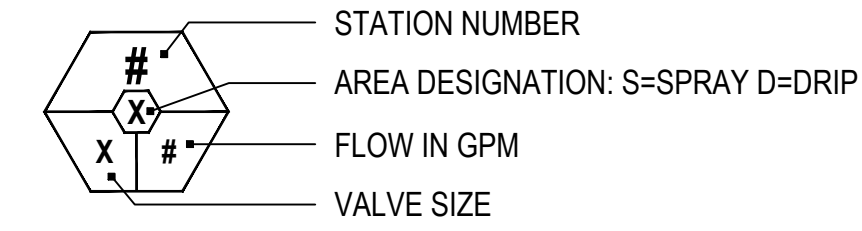
1. CALL UTILITIES TO LOCATE EXISTING SERVICES PRIOR TO EXCAVATION.
2. SYSTEM OPERATION AND DESIGN IS BASED ON 75 POUNDS OF PRESSURE AND 400 GALLONS AT THE POINT OF CONNECTION. VERIFY THE DESIGN PRESSURE AND VOLUME BEFORE INSTALLATION AND NOTIFY OWNER'S REPRESENTATIVE IF THERE IS A DISCREPANCY.
3. REFERENCE PLANTING PLAN(S) PRIOR TO INSTALLATION OF VALVES. LOCATE VALVES IN PLANTING BEDS WHEREVER POSSIBLE. ADJUST VALVE LOCATIONS TO ELIMINATE CONFLICT WITH PROPOSED PLANTINGS AND PLANTING PATTERNS.
4. VALVE LOCATIONS TO BE STAKED AND APPROVED BY THE OWNER'S REPRESENTATIVE PRIOR TO INSTALLATION OF NEW IRRIGATION SYSTEM.
5. VERIFY THE DIMENSIONS AND LAYOUT OF ALL NEW PLANTING AND SEEDING AREAS ON SITE BEFORE STARTING WORK AND IMMEDIATELY NOTIFY OWNER'S REPRESENTATIVE OF ANY DEVIATIONS FROM PLAN.
6. STAKE PROPOSED TREE LOCATIONS AND OBTAIN APPROVAL BY THE OWNER'S REPRESENTATIVE PRIOR TO INSTALLATION OF NEW IRRIGATION SYSTEM.
7. INSTALL QUICK COUPLING VALVES AS SHOWN ON PLANS AND DETAILS.
8. MAIN AND LATERAL LINES MAY BE SHOWN DIAGRAMMATICALLY FOR CLARITY. MAIN AND LATERAL LINES SHOWN IN PAVED AREAS SHALL BE PLACED IN ADJACENT PLANTING BEDS UNLESS SPECIFICALLY SHOWN AS PASSING UNDER PAVING IN SLEEVING (SEE SCHEDULE FOR SLEEVE SYMBOL). OBTAIN THE OWNER'S REPRESENTATIVE'S APPROVAL BEFORE MAKING CHANGES IN ROUTING OF PIPE OR LOCATION OF VALVES.
9. THE CONTRACTOR SHALL PROTECT THE EXISTING SYSTEM AND MAINTAIN ITS PERFORMANCE AT ALL TIMES DURING THE WORK OF THIS SECTION UNLESS OTHERWISE APPROVED BY THE OWNER'S REPRESENTATIVE. THE CONTRACTOR SHALL REPAIR ALL LINES THAT ARE CUT BY NEW CONSTRUCTION AND RE-ROUTE TO MAINTAIN SYSTEM PERFORMANCE.
10. WHEN NECESSARY DURING CONSTRUCTION THE CONTRACTOR SHALL MAKE ARRANGEMENTS FOR IRRIGATION SHUTOFF THROUGH THE OWNER'S REPRESENTATIVE. THE CONTRACTOR SHALL PROVIDE COMPLETE TEMPORARY IRRIGATION TO ALL LANDSCAPE AREAS AFFECTED BY THE SHUT-OFF, DURING NORMAL WATERING SEASONS.
11. THE CONTRACTOR SHALL MAINTAIN, REPAIR OR REPLACE CONTROLLER WIRING AFFECTED BY CONSTRUCTION AND INTEGRATE NEW SYSTEM REQUIREMENTS INTO THE EXISTING CONTROLLER.

IRRIGATION SCHEDULE

IRRIGATION HEADS				5	6	7
				L3.01	L3.01	L3.01
SYMBOL	DESCRIPTION	MANUFACTURER / MODEL	PSI	RAD.		
Ⓜ	ROTATOR	HUNTER MP1000 PROS-12-PRS40-CV-F-R	40	14'		
Ⓝ	ROTATOR	HUNTER MP2000 PROS-12-PRS40-CV-F-R	40	19'		
Ⓜ	ROTATOR	HUNTER MP3000 PROS-12-PRS40-CV-F-R	40	30'		
Ⓝ	ROTATOR	HUNTER MP3000 PROS-12-PRS40-CV-F-R	40	30'		
Ⓜ	ROTATOR	HUNTER MP3000 PROS-12-PRS40-CV-F-R	40	30'		
Ⓝ	ROTATOR	HUNTER MP3500 PROS-12-PRS40-CV-F-R	40	35'		
△	EXISTING	HUNTER				

IRRIGATION EQUIPMENT AND PIPING				1	2	3	4	1	4	5	6
				L3.1	L3.1	L3.1	L3.1	L3.2	L3.2	L3.2	L3.2
SYMBOL	DESCRIPTION	MANUFACTURER	MODEL								
⊕	REMOTE CONTROL VALVE	RAINBIRD	PESBR-PRS-D								
⊗	ISOLATION VALVE	NIBCO	T-113-K								
Ⓜ	CONTROLLER - WALL MOUNT	RAINBIRD	ESP-LXD								
POC	POINT OF CONNECTION 2-1/2"										
—	IRRIGATION LATERAL LINE	PVC CLASS 200 SDR 21									
— — — —	IRRIGATION MAINLINE	PVC SCHEDULE 40									
— — — —	EXISTING IRRIGATION MAINLINE (LOCATION APPROXIMATE - CONTRACTOR TO VERIFY IN FIELD)										
— — — —	PIPE SLEEVE: PVC SCHEDULE 40										
□	EXISTING IRRIGATION RCV (LOCATION APPROXIMATE - CONTRACTOR TO VERIFY IN FIELD)										

CONTROL VALVE TARGET



GPM	PIPE SIZING
0-10	3/4"
11-16	1"
17-35	1.5"
36-55	2"



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VERIFY SCALE: DRAWINGS ARE TO SCALE
IF BAR MEASURES 1"
0" 1/2" 1"



Project: **Tri-City WRRF Planting Mitigation**
Water Environment Services
130 Beavercreek Road
Oregon City, OR 97145
Phone #
Email

Submittal: Bid Set
Sheet Title:

IRRIGATION SCHEDULE AND NOTES

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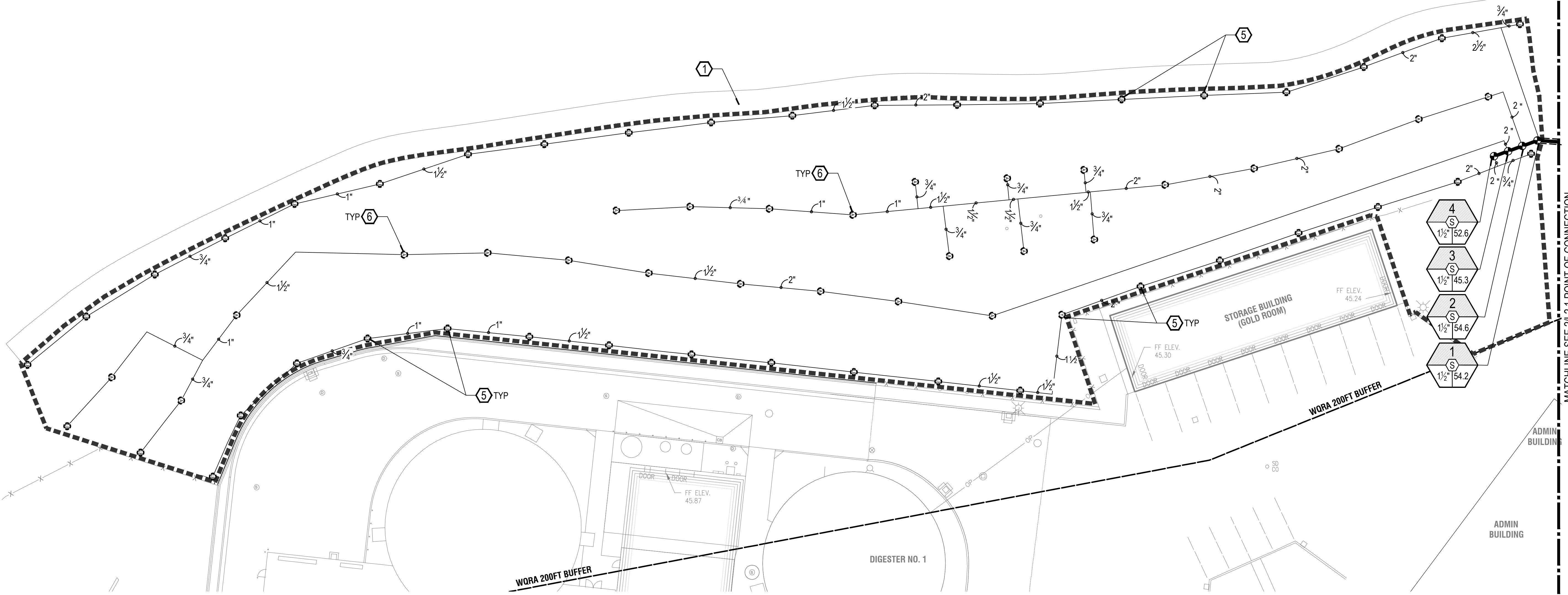
Revisions:

Drawn By: VS
Checked By: JD, DW
Job No. 200011.1
Approved: MF

L2.0

Sheet No. 8 of 13





1 MITIGATION_AREA

KEY NOTES

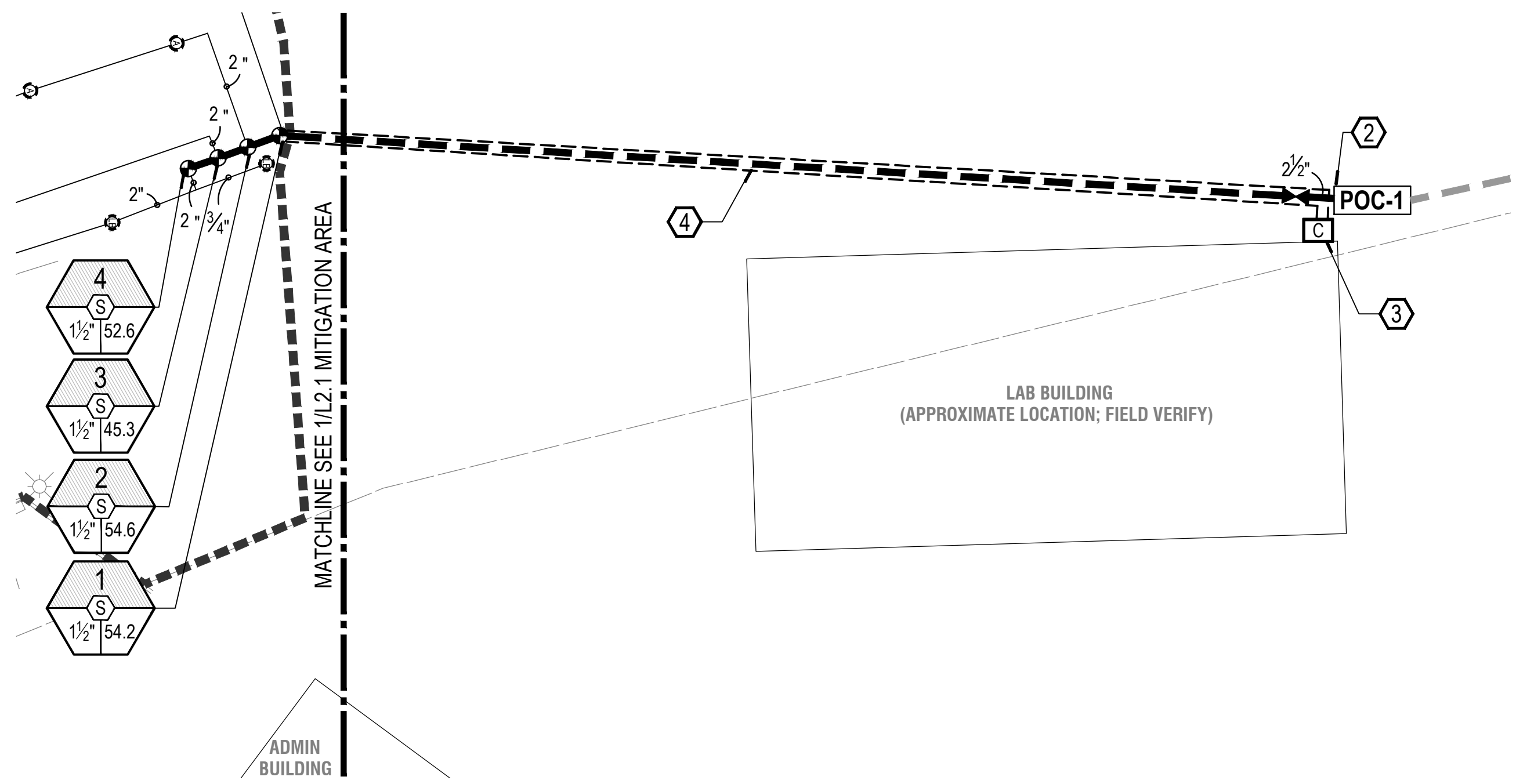
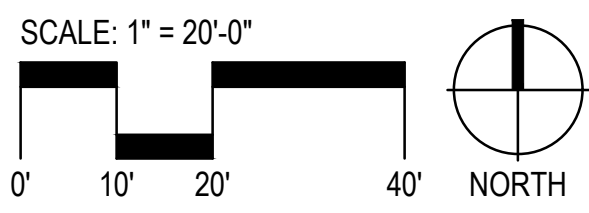
- 1 PUBLIC RECREATION TRAIL
- 2 POINT OF CONNECTION - CONNECT TO EXISTING IRRIGATION MAINLINE (FIELD VERIFY LOCATION). CONTRACTOR TO REPAIR LAWN AS NEEDED.
- 3 EXTEND POWER AND CONTROL WIRING FROM NEW CONTROLLER LOCATED INSIDE FENCE AREA.
- 4 PROVIDE MIN 1" SLEEVE OR TWICE THE DIAMETER OF BUNDLED WIRES TO NEW CONTROLLER.
- 5 ALL SPRAY HEADS ADJACENT TO PAVED OR GRAVEL SURFACING TO BE BELOW GRADE SWING JOINT ASSEMBLY. SEE DETAIL 5/L3.1.
- 6 ALL SPRAY HEADS WITHIN PLANTING AREA NOT ADJACENT TO PAVED OR GRAVEL SURFACING TO BE ON GRADE PVC SWING JOINT ASSEMBLY. SEE DETAIL 6/L3.1.

LEGEND

--- PROJECT LIMIT OF WORK

SHEET NOTES

- 1. SEE SHEET G0.1 FOR GENERAL LEGEND AND NOTES
- 2. SEE SHEET L2.0 FOR IRRIGATION SCHEDULE AND GENERAL NOTES



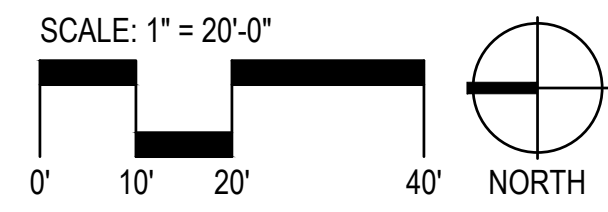
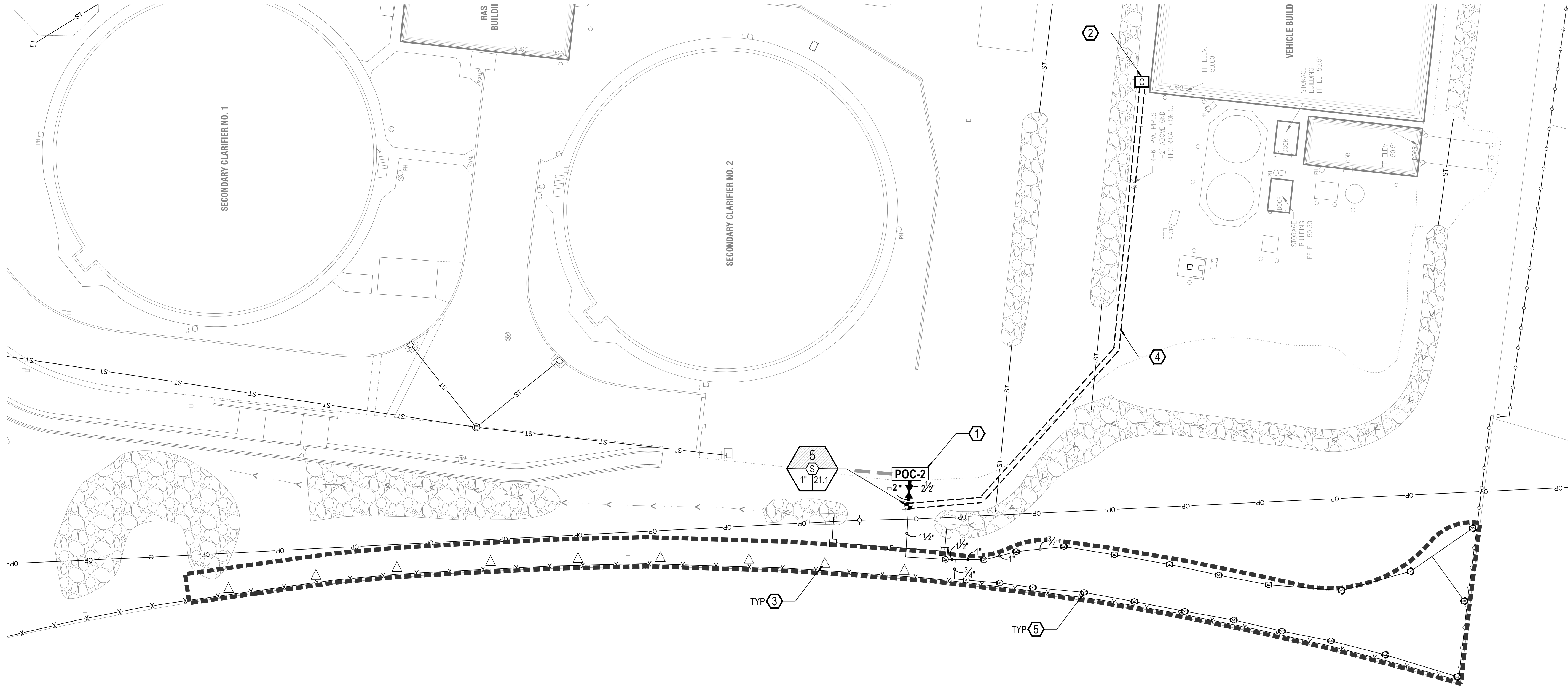
2 POINT_OF_CONNECTION

Submital: Bid Set
Sheet Title: **IRRIGATION PLAN - NORTH**

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Date: 09/03/2020
Revisions:

Drawn By: VS
Checked By: JD, DW
Job No. 200011.1
Approved: MF

L2.1
Sheet No. 9 of 13



- SHEET NOTES**
- SEE SHEET G0.1 FOR GENERAL LEGEND AND NOTES
 - SEE SHEET L2.0 FOR IRRIGATION SCHEDULE AND GENERAL NOTES

- KEY NOTES**
- POINT OF CONNECTION - CONNECT TO EXISTING IRRIGATION MAINLINE (FIELD VERIFY LOCATION). CONTRACTOR TO REPAIR LAWN AS NEEDED.
 - EXTEND POWER AND CONTROL WIRING FROM NEW CONTROLLER.
 - EXISTING PLANTING AND IRRIGATION EQUIPMENT TO REMAIN UNDISTURBED.
 - PROVIDE MIN 1" SLEEVE OR TWICE THE DIAMETER OF BUNDLED WIRES TO NEW CONTROLLER.
 - ALL SPRAY HEADS IN SCREENING BUFFER AREA TO BE BELOW GRADE PVC SWING JOINT ASSEMBLY. SEE DETAIL 7/L3.1.

- LEGEND**
- PROJECT LIMIT OF WORK
 - EXISTING RIPRAP
 - EXISTING IRRIGATION VAULT
 - EXISTING IRRIGATION HEAD

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 LANDSCAPE ARCHITECT
 VERIFY SCALE: DRAWINGS ARE TO SCALE
 IF BAR MEASURES 1"
 0" 1/2" 1"

CLACKAMAS
WATER ENVIRONMENT SERVICES

Project: **Tri-City WRRF Planting Mitigation**
 Water Environment Services
 130 Beavercreek Road
 Oregon City, OR 97145
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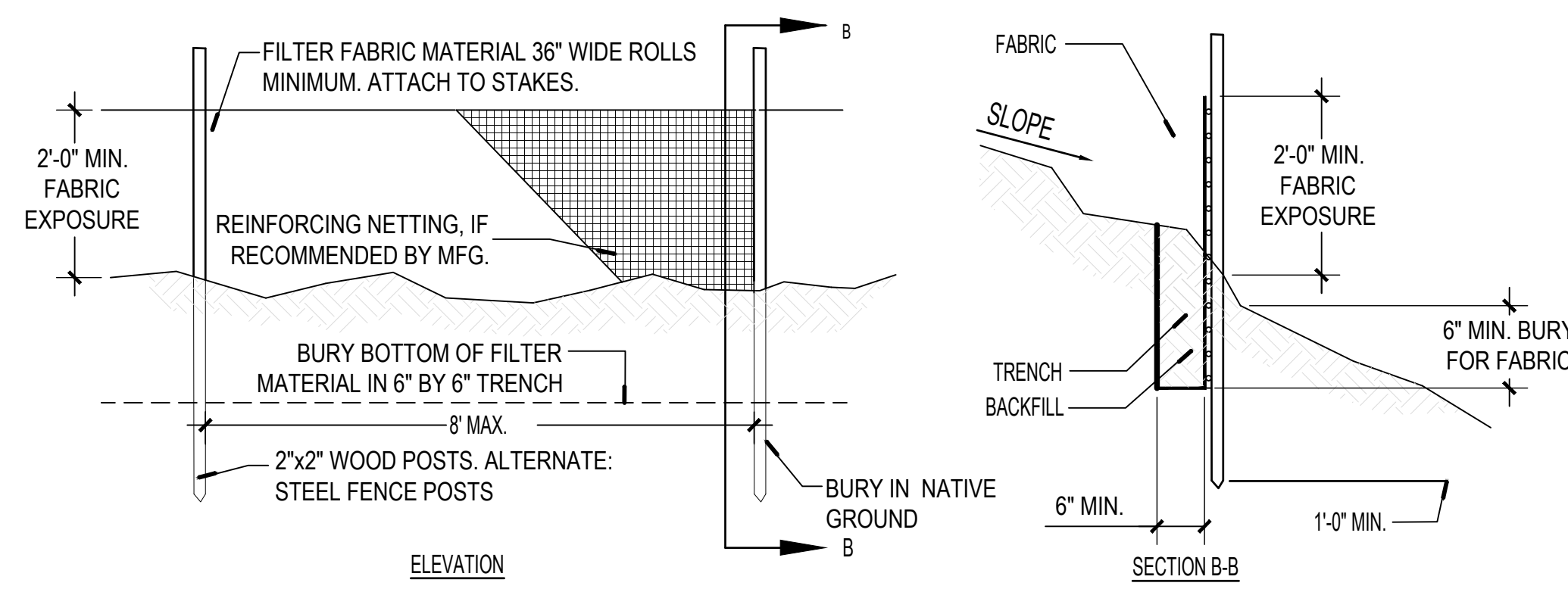
Submittal: **Bid Set**
 Sheet Title: **IRRIGATION PLAN - WEST**

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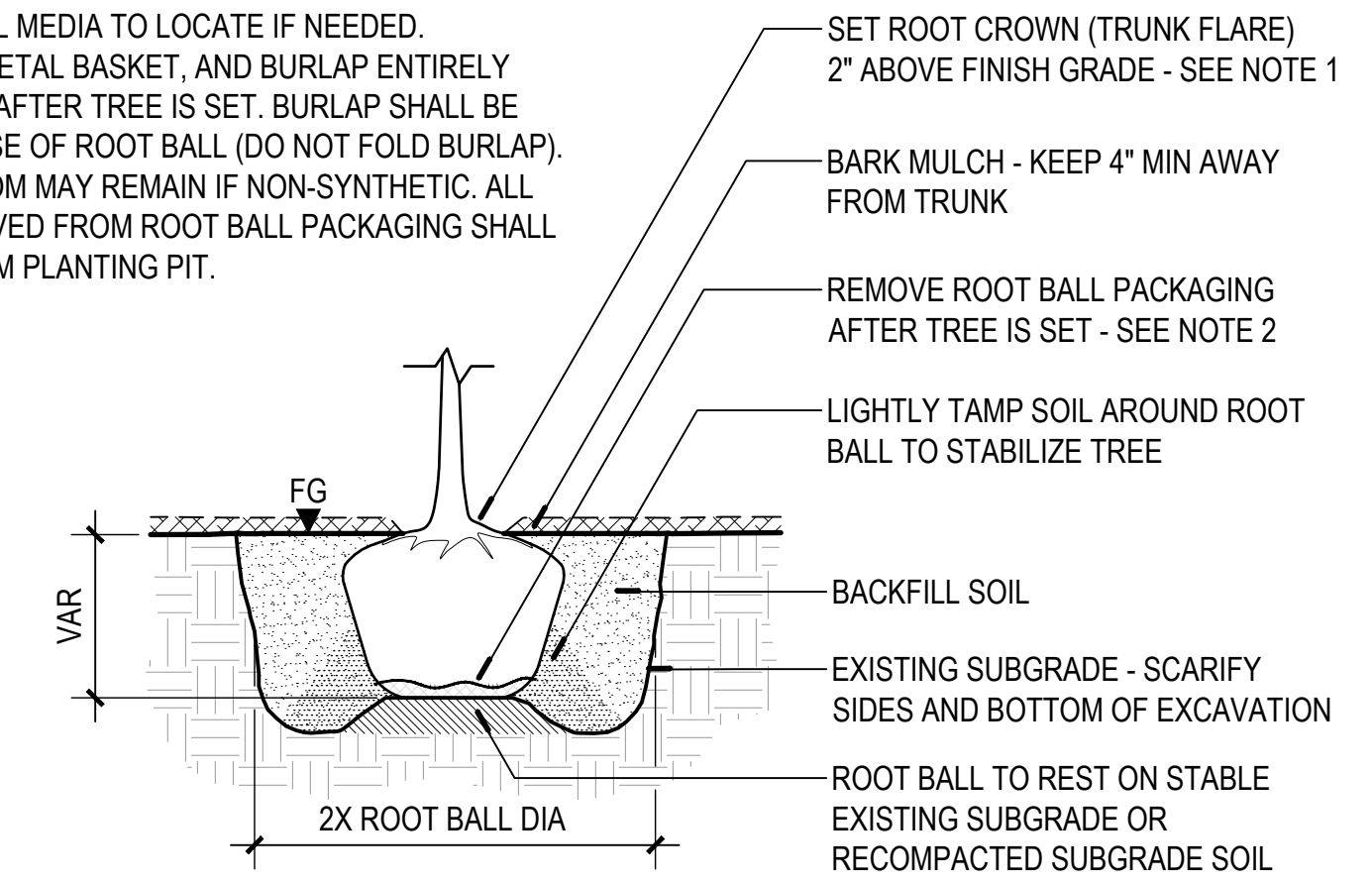
L2.2
 Sheet No. 10 of 13

3:\PROJECTS\200011.1\WEB_TRI-CITY_WRRF\02_PRODUCTION\01_CAD\01_PLOT_SHEET\200011.1_IRR_PLAN.DWG



- NOTES:
1. INSTALLATION SHALL FOLLOW THE MANUFACTURERS RECOMMENDATIONS.
 2. POSTS SHALL BE INSTALLED SO THAT A MIN. OF 3'-0\"/>

- NOTES:
1. ROOT CROWN TO BE VISIBLE BEFORE TREE IS SET. REMOVE TOP OF ROOT BALL MEDIA TO LOCATE IF NEEDED.
 2. REMOVE TWINE, METAL BASKET, AND BURLAP ENTIRELY FROM ROOT BALL AFTER TREE IS SET. BURLAP SHALL BE CUT DOWN TO BASE OF ROOT BALL (DO NOT FOLD BURLAP). BURLAP ON BOTTOM MAY REMAIN IF NON-SYNTHETIC. ALL MATERIALS REMOVED FROM ROOT BALL PACKAGING SHALL BE REMOVED FROM PLANTING PIT.



1 SEDIMENT FENCE
Section

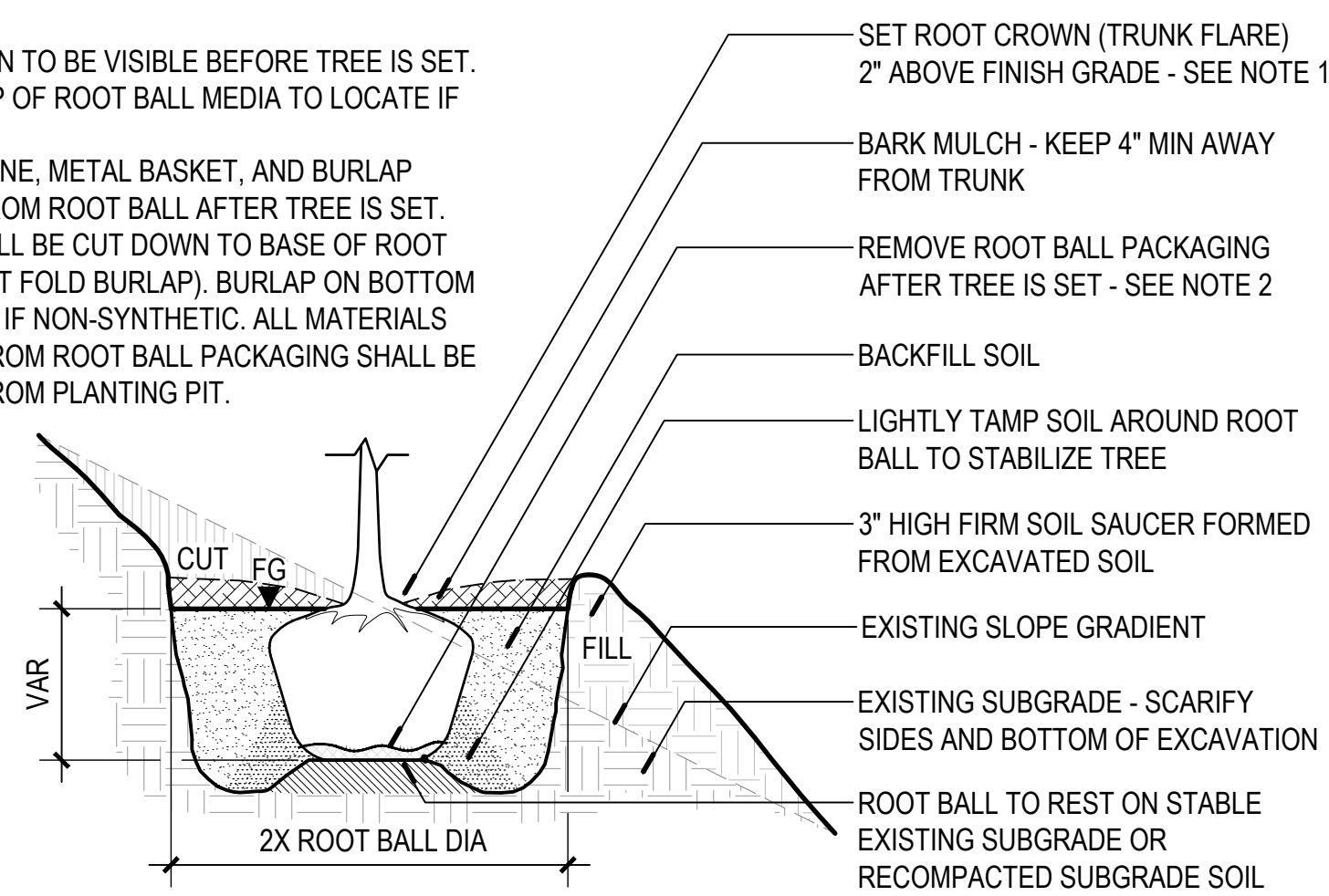
NOT TO SCALE

2 TREE PLANTING - B&B
SECTION

NOT TO SCALE

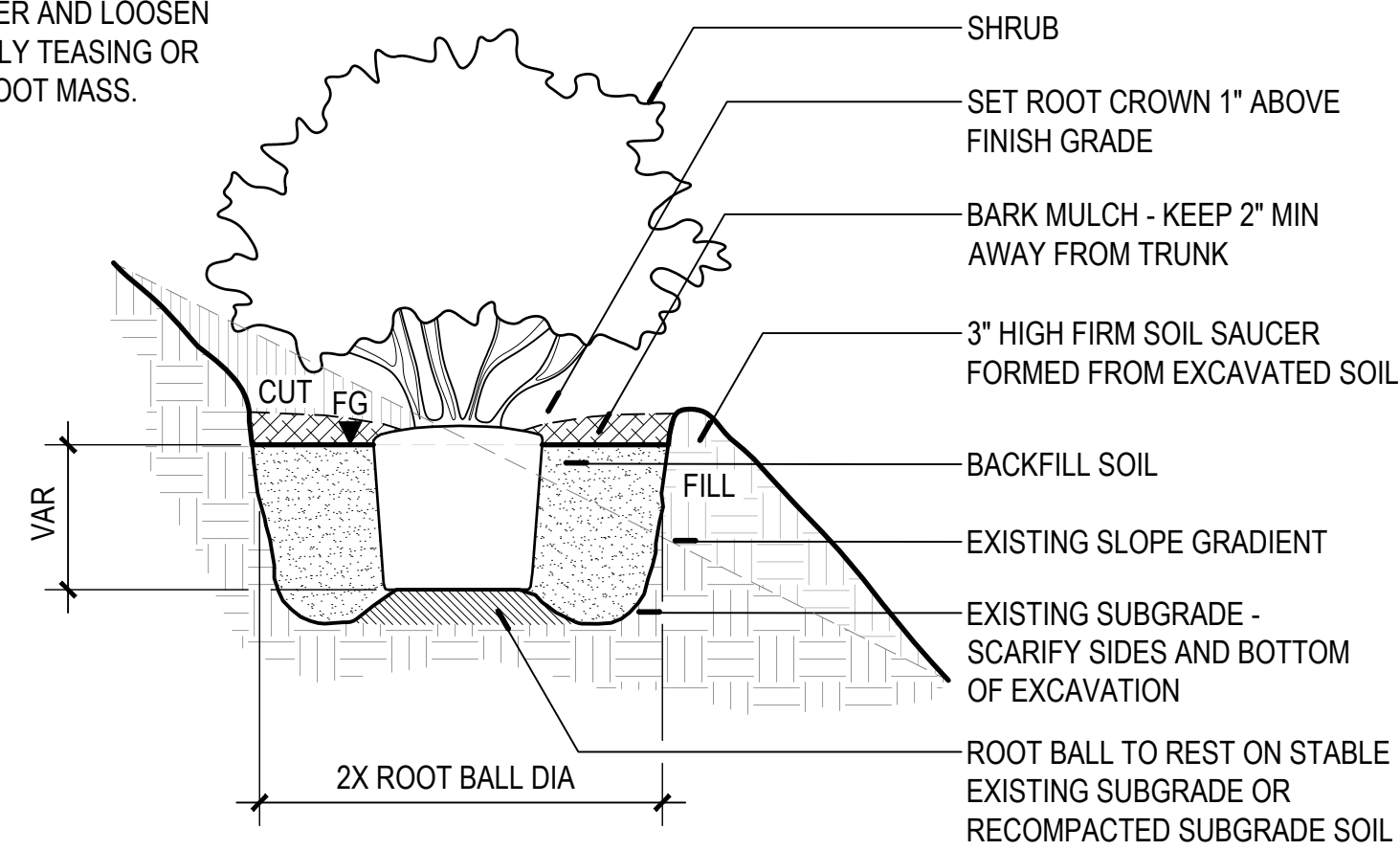
NOTES:

1. ROOT CROWN TO BE VISIBLE BEFORE TREE IS SET. REMOVE TOP OF ROOT BALL MEDIA TO LOCATE IF NEEDED.
2. REMOVE TWINE, METAL BASKET, AND BURLAP ENTIRELY FROM ROOT BALL AFTER TREE IS SET. BURLAP SHALL BE CUT DOWN TO BASE OF ROOT BALL (DO NOT FOLD BURLAP). BURLAP ON BOTTOM MAY REMAIN IF NON-SYNTHETIC. ALL MATERIALS REMOVED FROM ROOT BALL PACKAGING SHALL BE REMOVED FROM PLANTING PIT.



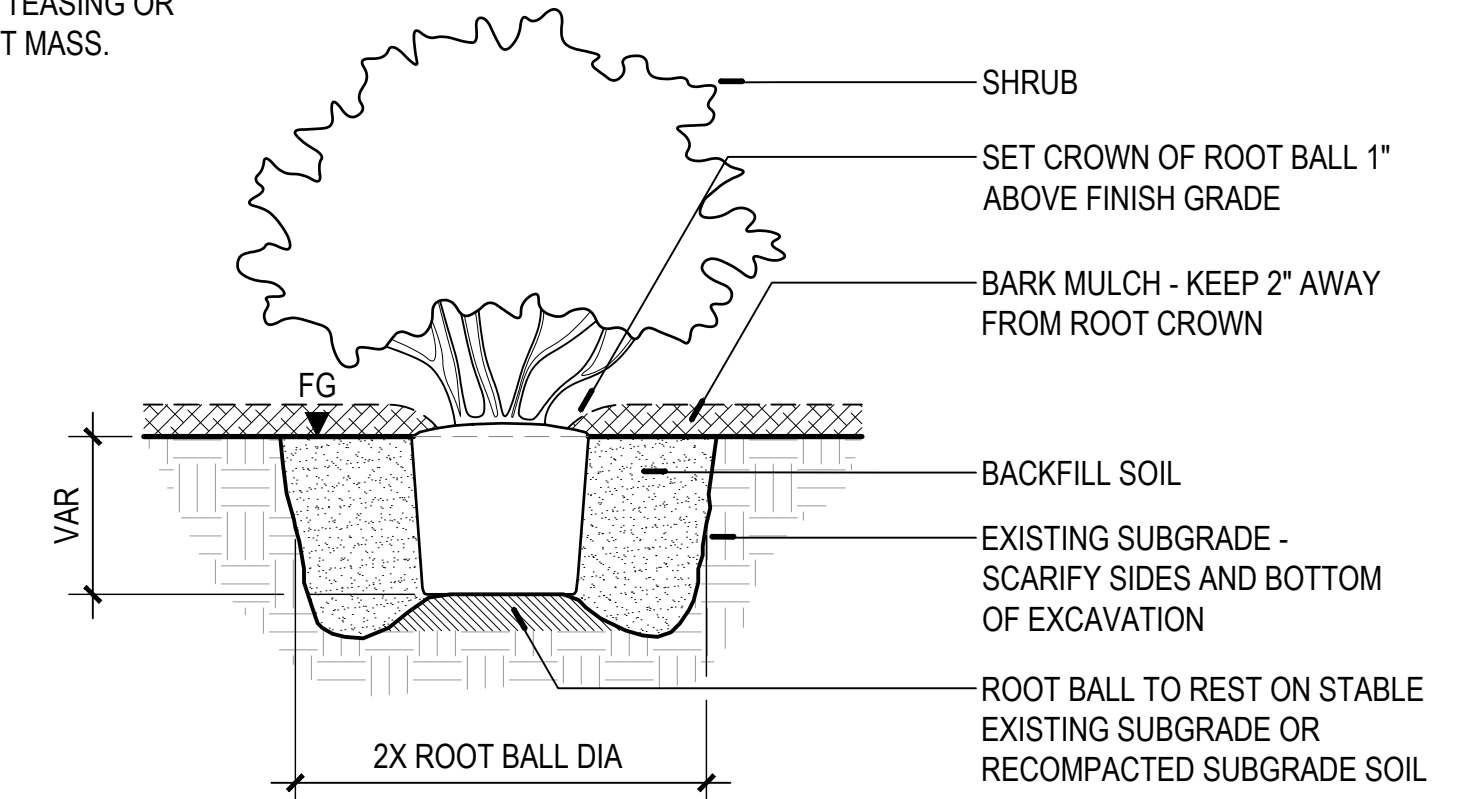
NOTE:

PRIOR TO PLANTING, REMOVE SHRUB FROM CONTAINER AND LOOSEN SIDES BY LIGHTLY TEASING OR SCRATCHING ROOT MASS.



NOTE:

PRIOR TO PLANTING, REMOVE SHRUB FROM CONTAINER AND LOOSEN SIDES BY LIGHTLY TEASING OR SCRATCHING ROOT MASS.



3 TREE PLANTING - B&B ON SLOPE
SECTION

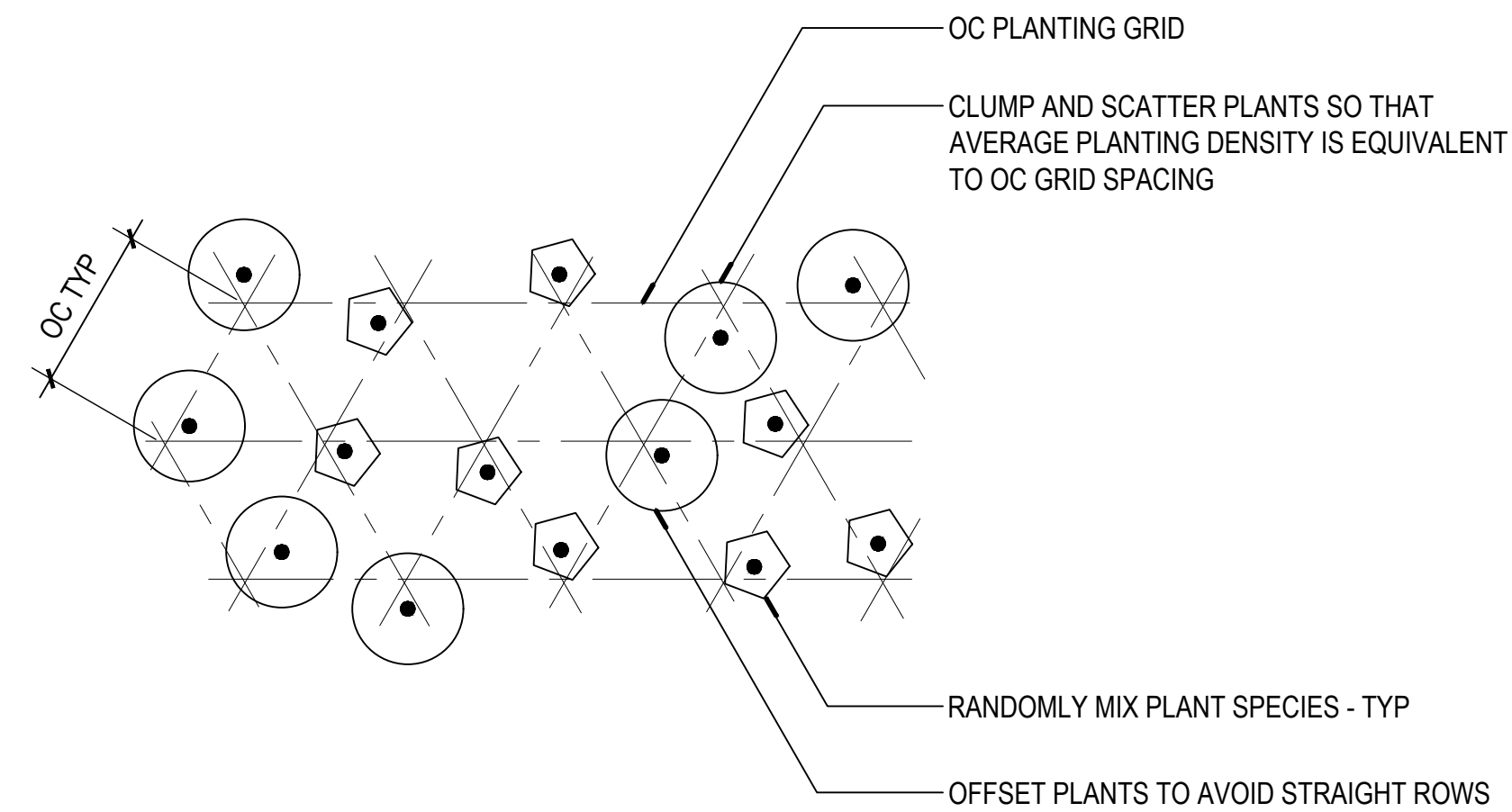
NOT TO SCALE

4 SHRUB CONTAINER PLANTING ON SLOPE
SECTION

NOT TO SCALE

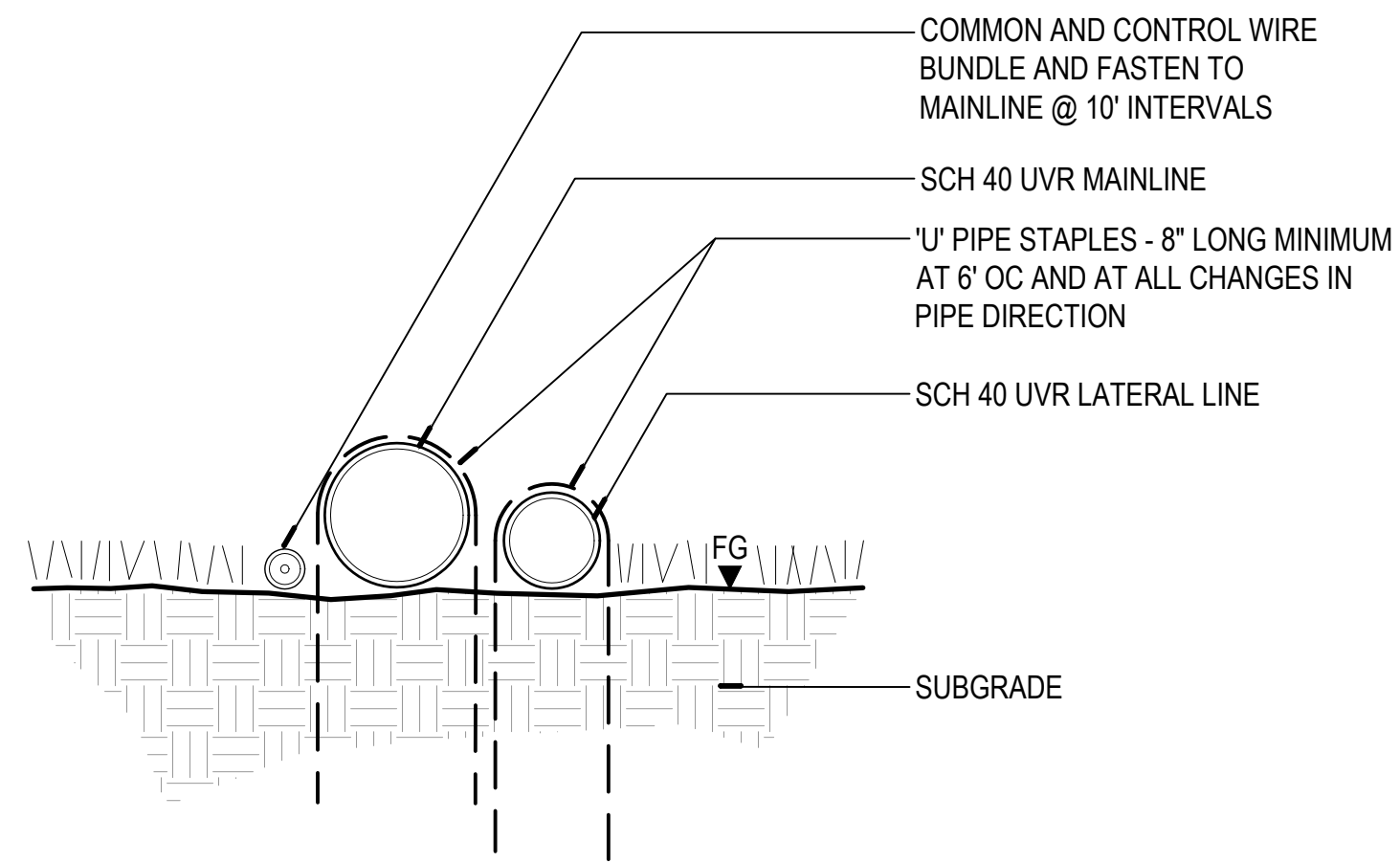
5 SHRUB CONTAINER PLANTING
SECTION

NOT TO SCALE

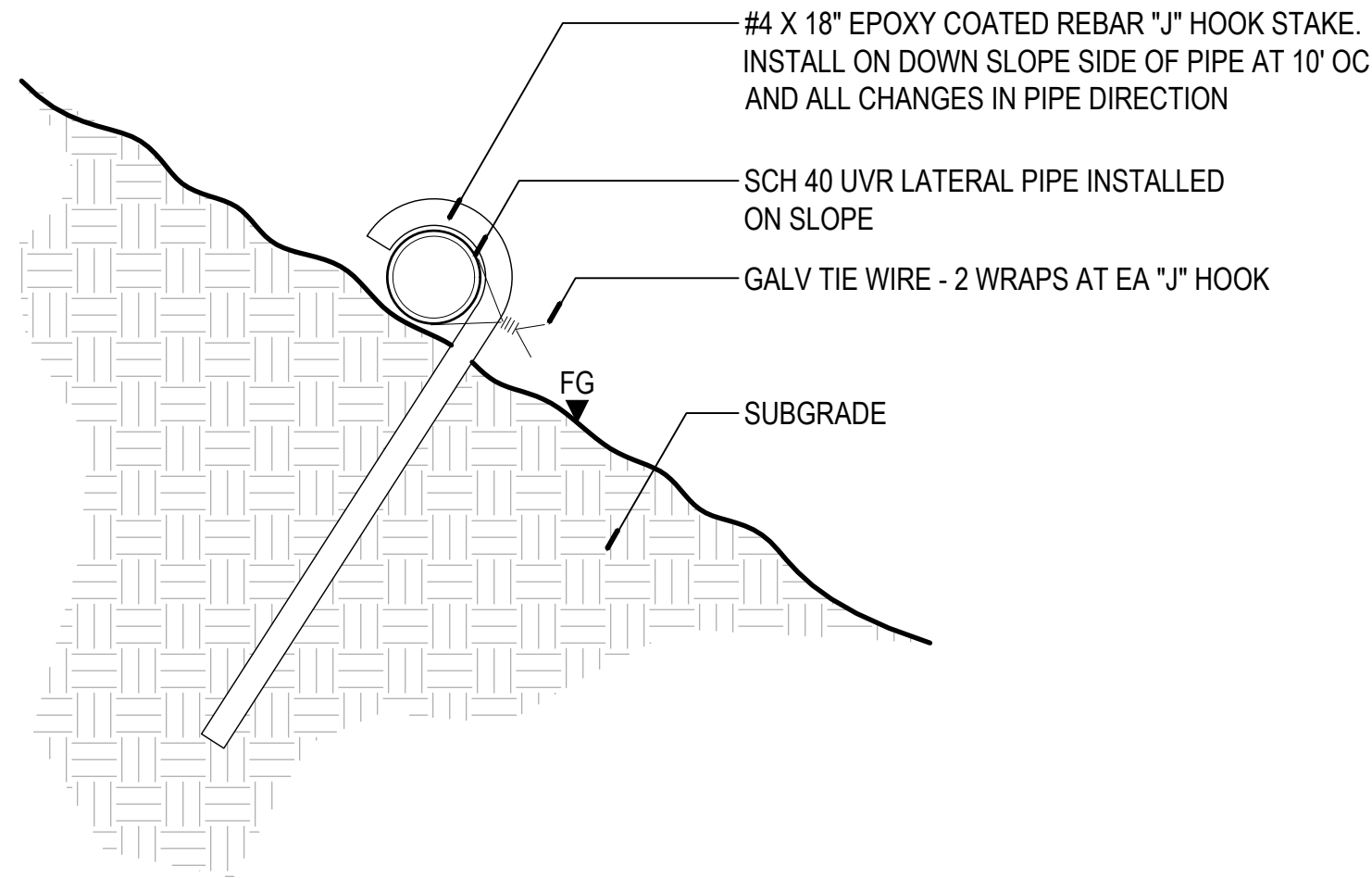


6 RANDOM PLANTING PATTERN
PLAN

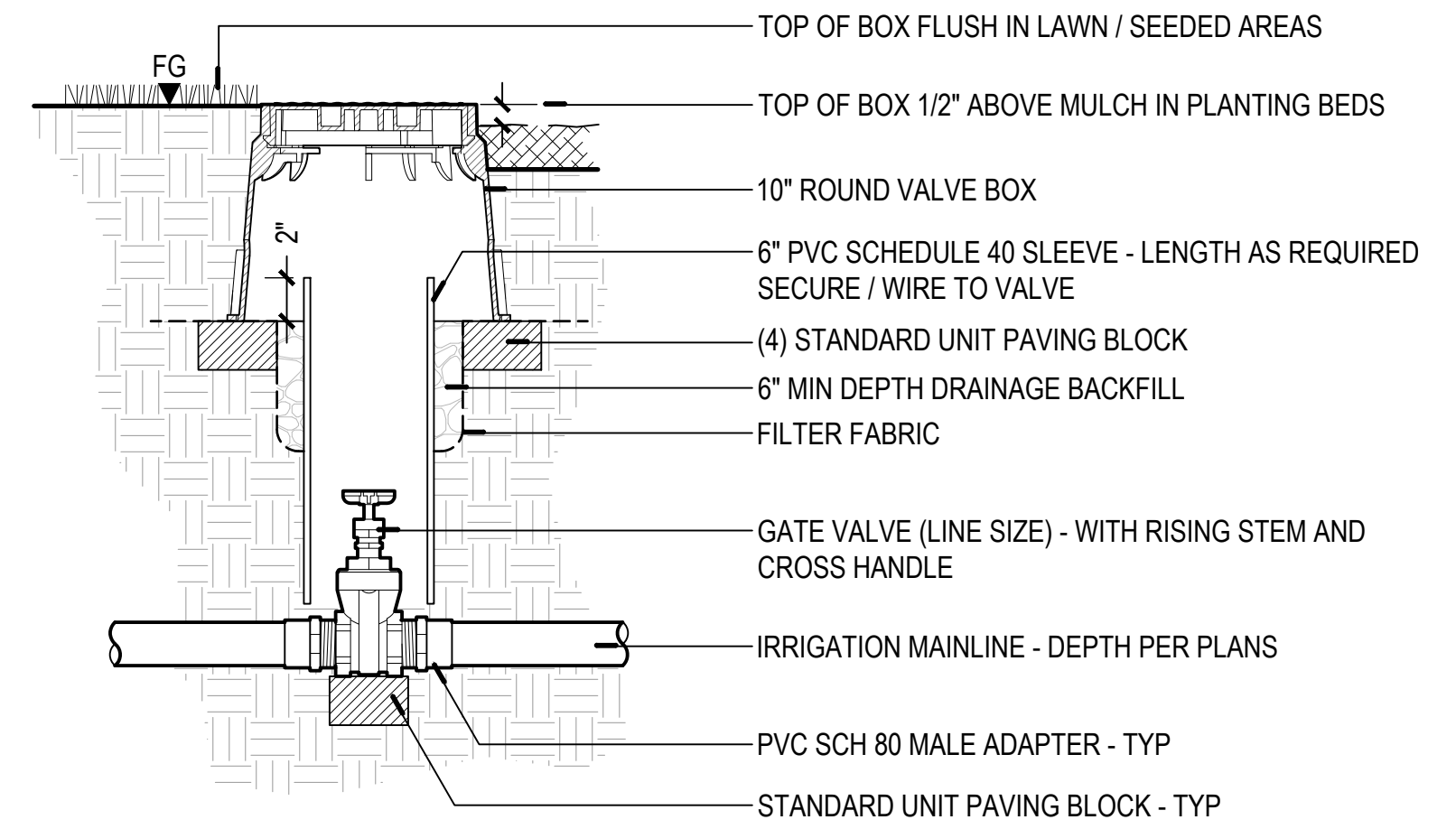
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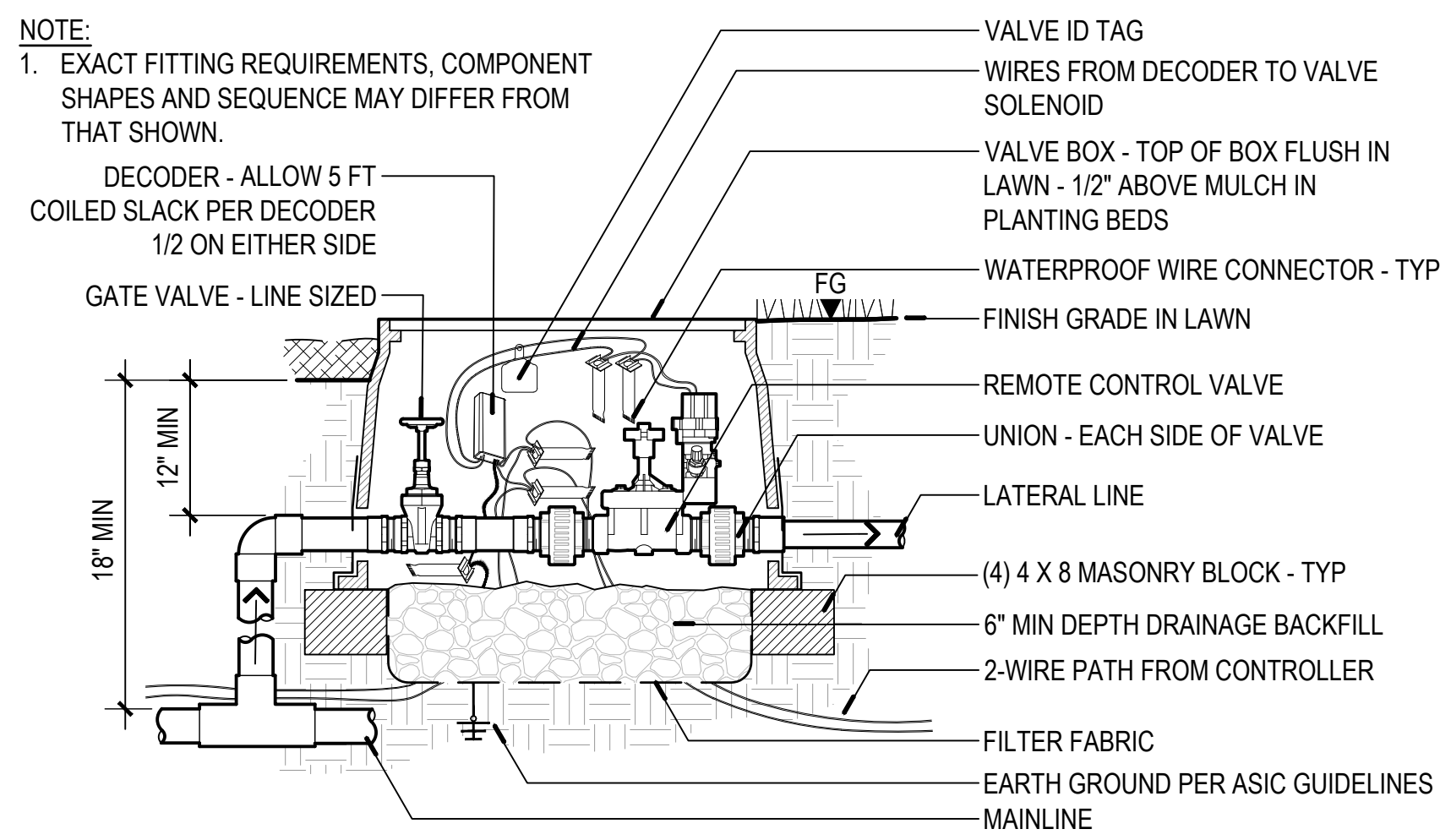
1 PIPE - ON GRADE (TEMP IRRIGATION) SECTION NOT TO SCALE



2 PIPE - ON SLOPED GRADE (TEMP IRRIGATION) SECTION NOT TO SCALE

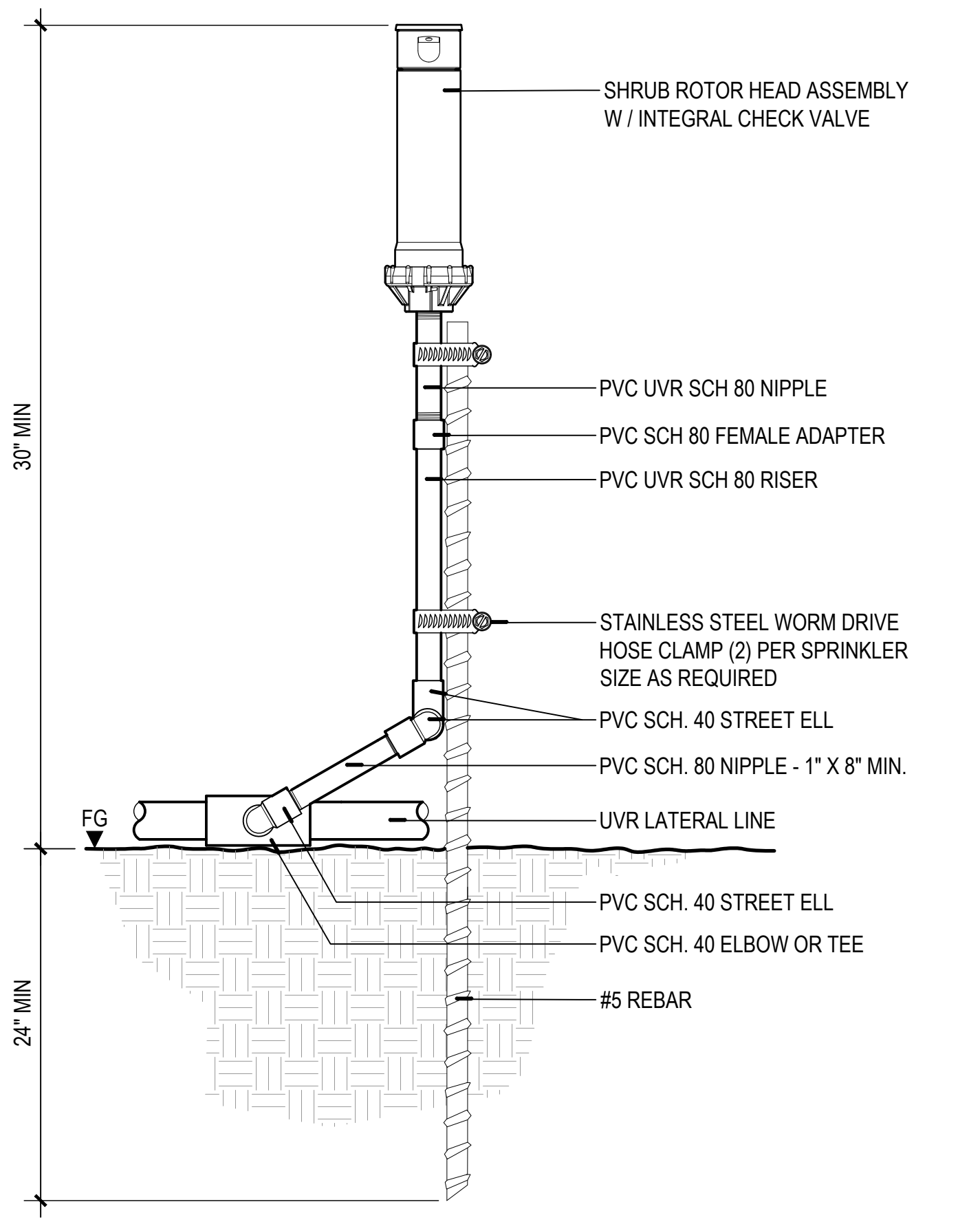


3 ISOLATION VALVE ASSEMBLY SECTION NOT TO SCALE



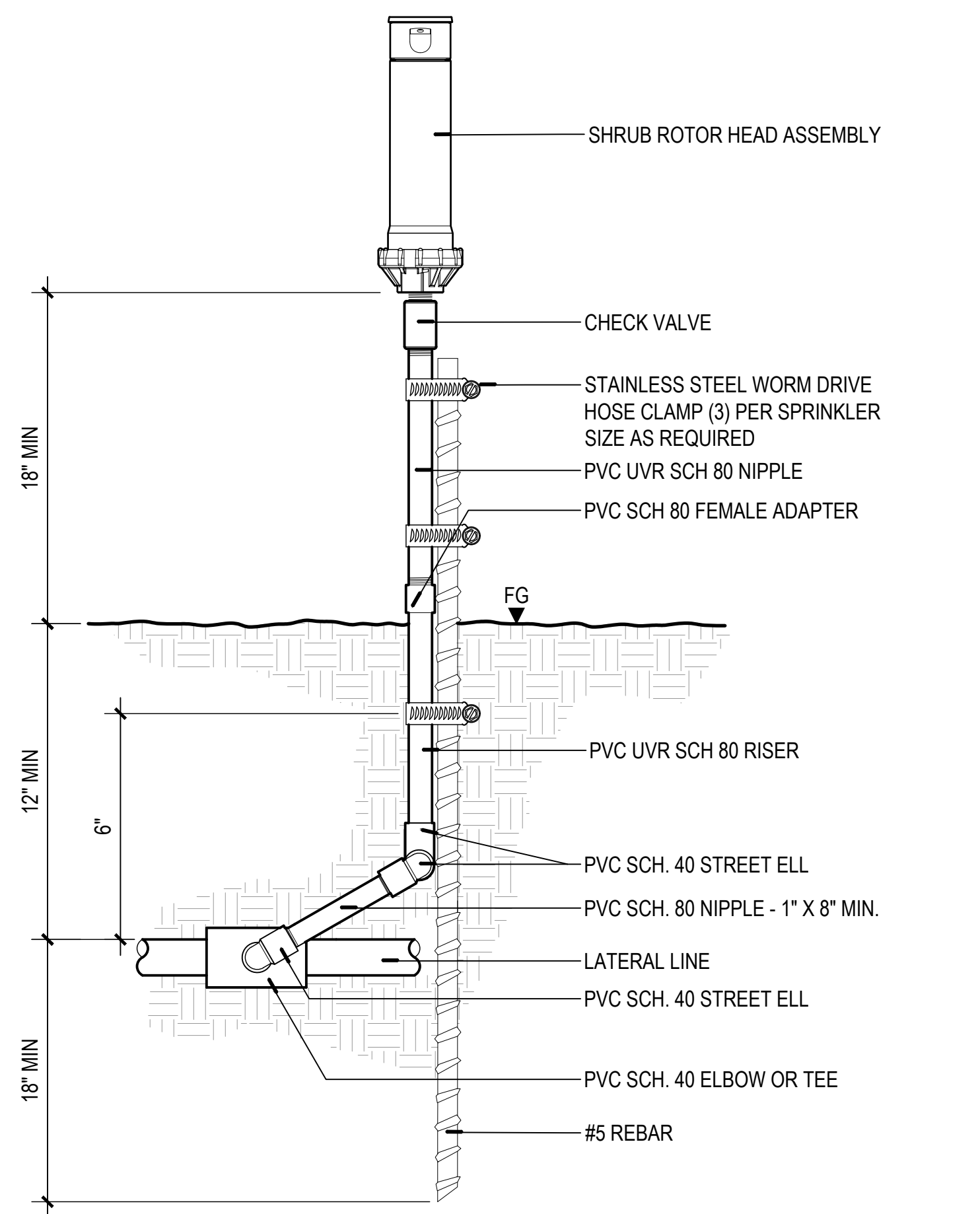
4 REMOTE CONTROL VALVE / DECODER ASSEMBLY SECTION NOT TO SCALE

NOTE:
DO NOT LOCATE HEADS ON RISERS CLOSER THAN 8 FEET TO TURF, SIDEWALKS, CURB, ROADWAY OR OTHER PEDESTRIAN SURFACES

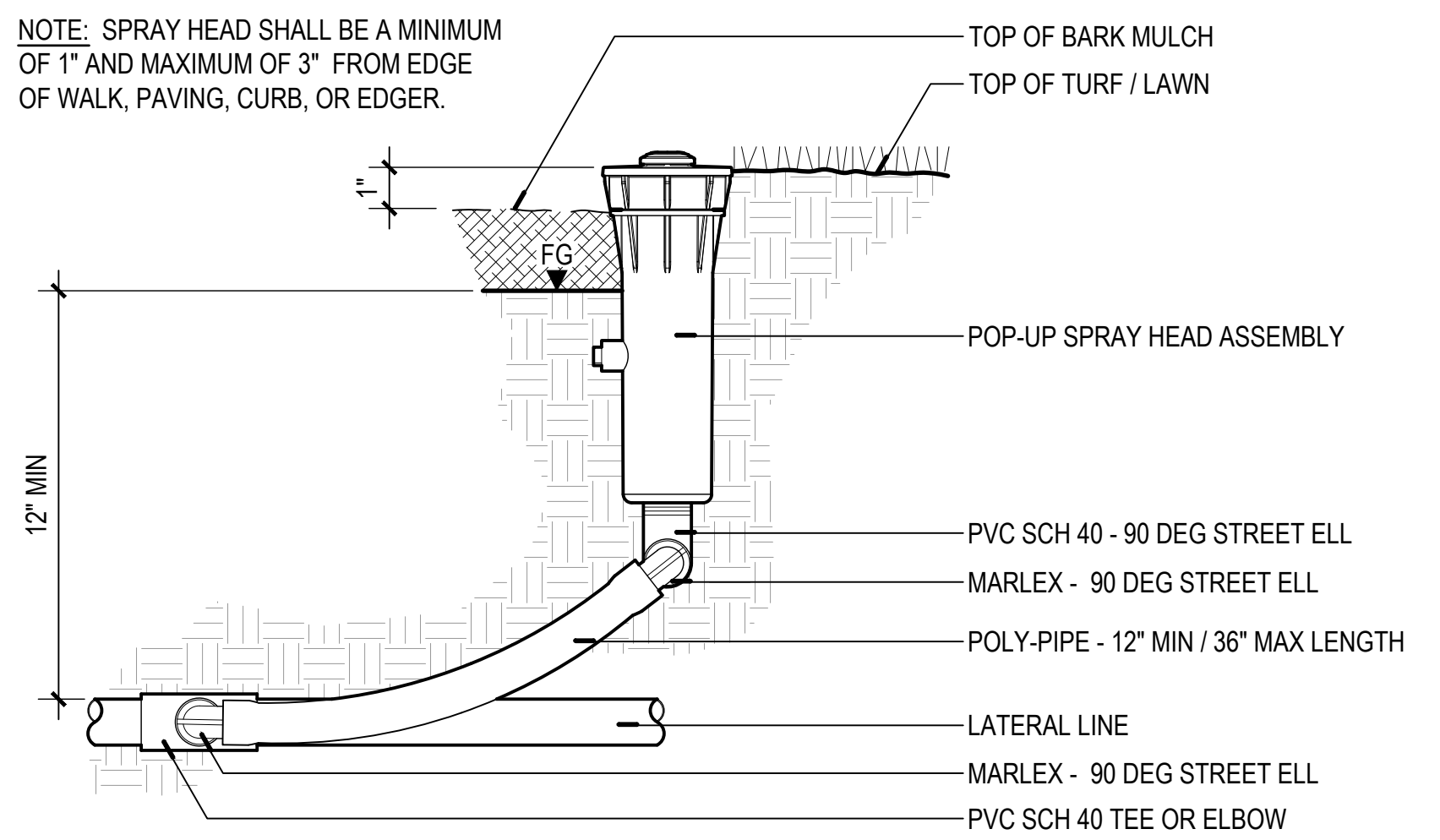


6 SHRUB ROTOR HEAD - PVC SWING JOINT ASSEMBLY ON GRADE (TEMPORARY IRRIGATION) SECTION NOT TO SCALE

NOTES:
1. LOCATE CHECK VALVES IN FIELD TO ELIMINATE ALL LOW HEAD DRAINAGE.
DO NOT LOCATE HEADS ON RISERS CLOSER THAN 8 FEET TO TURF, SIDEWALKS, CURB, ROADWAY OR OTHER PEDESTRIAN SURFACES

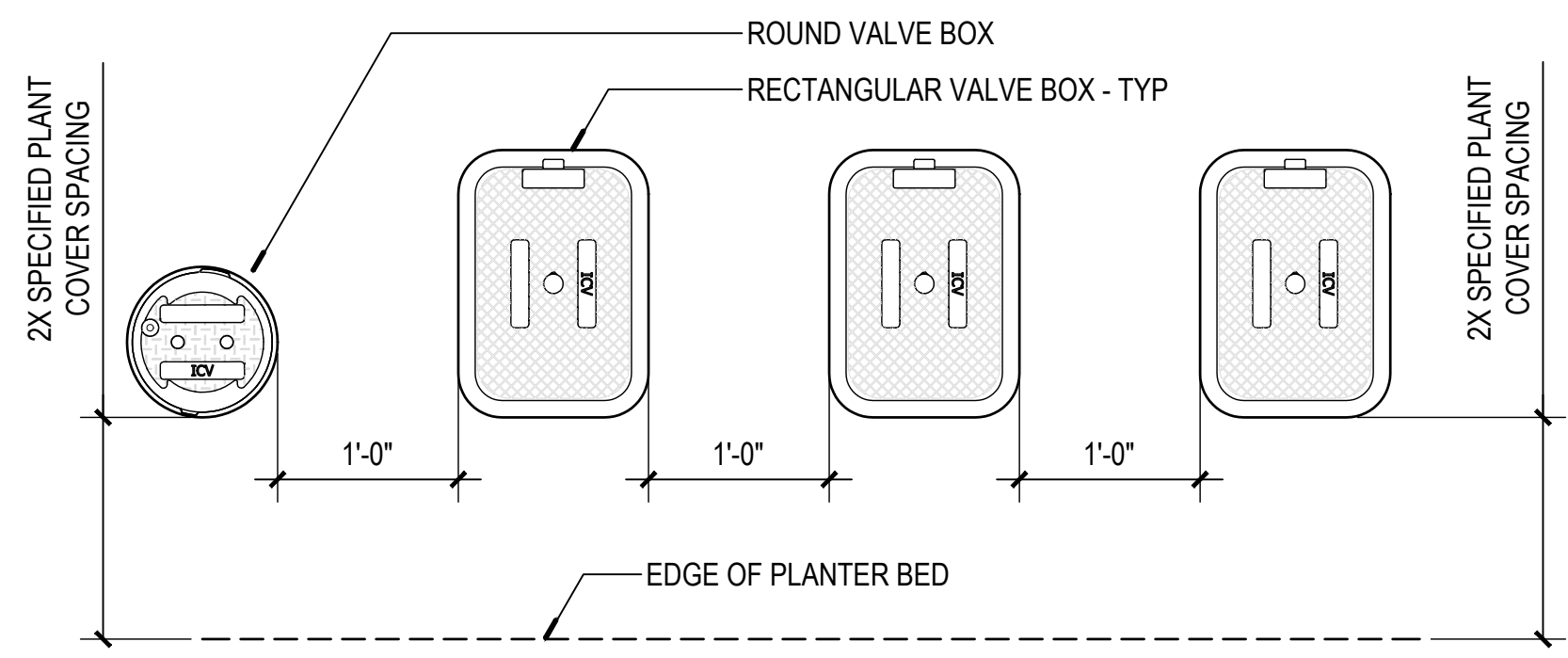


7 ROTOR HEAD - PVC SWING JOINT ASSEMBLY SECTION NOT TO SCALE



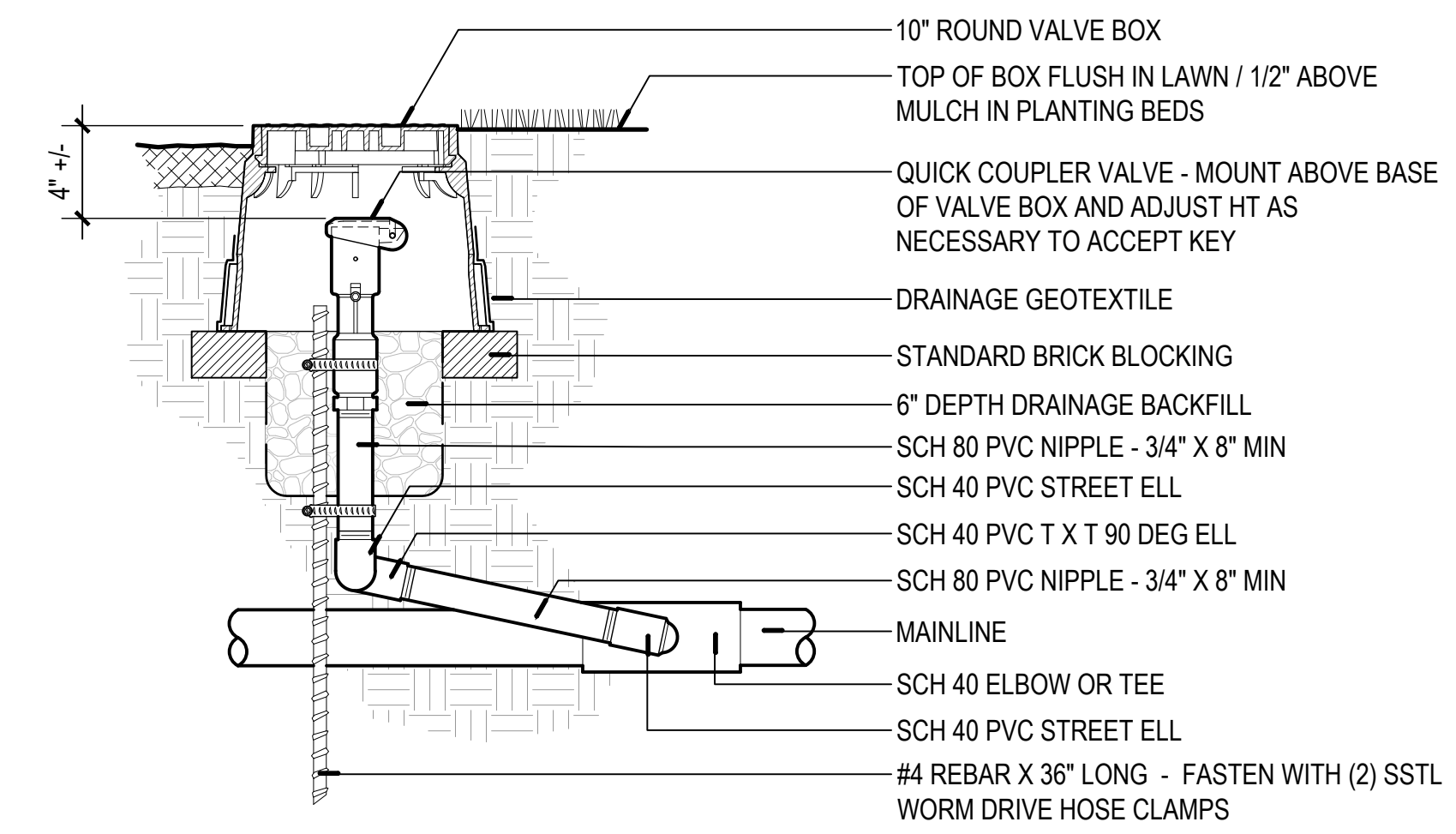
5 SPRAY HEAD - SWING JOINT ASSEMBLY SECTION NOT TO SCALE

3:PROJECTS\200011_1_LINES_TRI-CITY_WRRF\02_PRODUCION\01_CAD\01_PLOT_SHEET\200011_1_DET.DWG

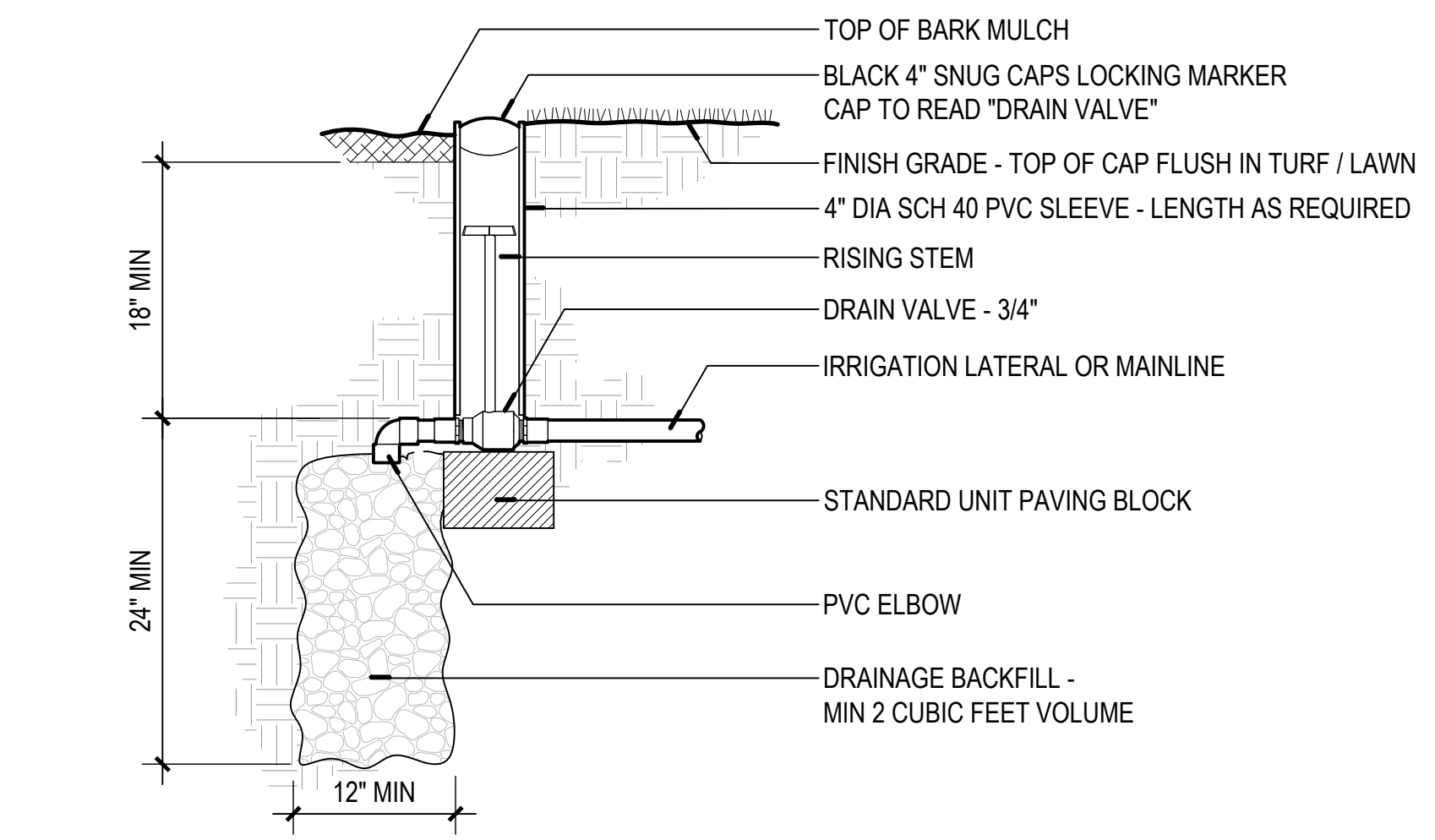


- NOTES:**
1. VALVE BOX LID COLOR SHALL BE PER IRRIGATION SPECIFICATIONS.
 2. VALVE BOXES TO BE INSTALLED TO ALLOW FOR ORDERLY ARRANGEMENT.
 3. LOCATION OF VALVE ASSEMBLIES SHALL BE STAKED FOR APPROVAL BY OWNER'S REPRESENTATIVE.
 4. CENTER VALVE BOXES OVER VALVE ASSEMBLIES.
 5. SET VALVE BOXES WITH TOPS AT EQUAL ELEVATIONS UNLESS STATED OTHERWISE.

1 VALVE BOX LAYOUT
PLAN NOT TO SCALE

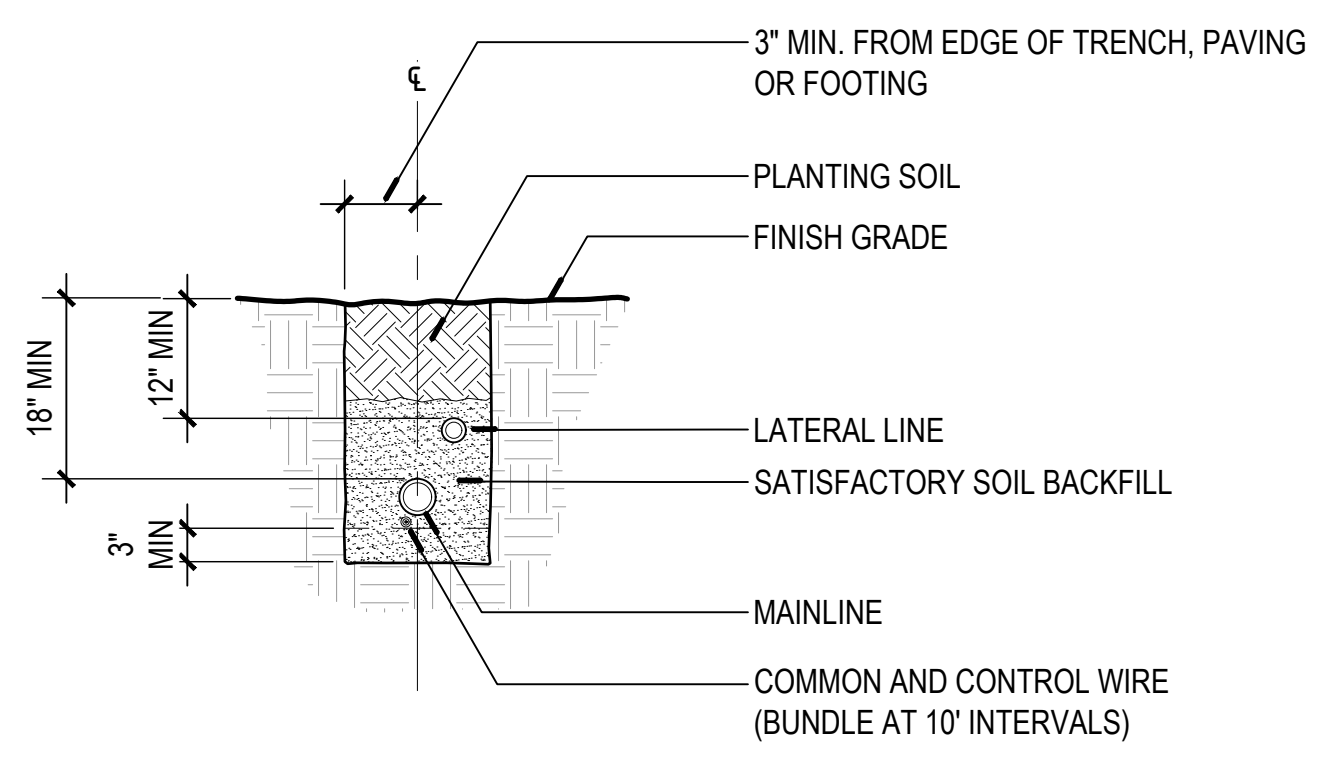


2 QUICK COUPLER VALVE ASSEMBLY
SECTION NOT TO SCALE



3 MANUAL DRAIN VALVE
SECTION NOT TO SCALE

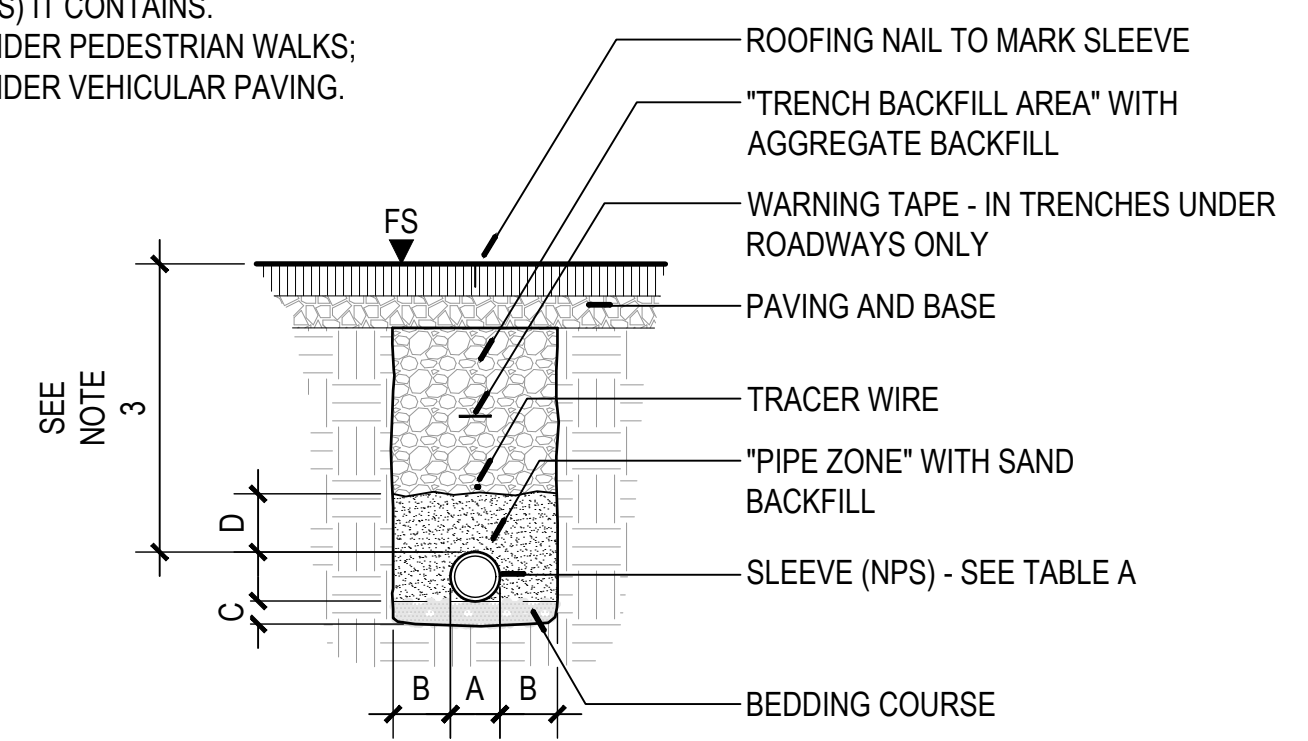
NOTE:
REPAIR TRENCH SETTLEMENT AND RESTORE FINISH GRADES PRIOR TO SEEDING OR PLANTING.



4 TRENCHING IN PLANTING AREAS
SECTION NOT TO SCALE

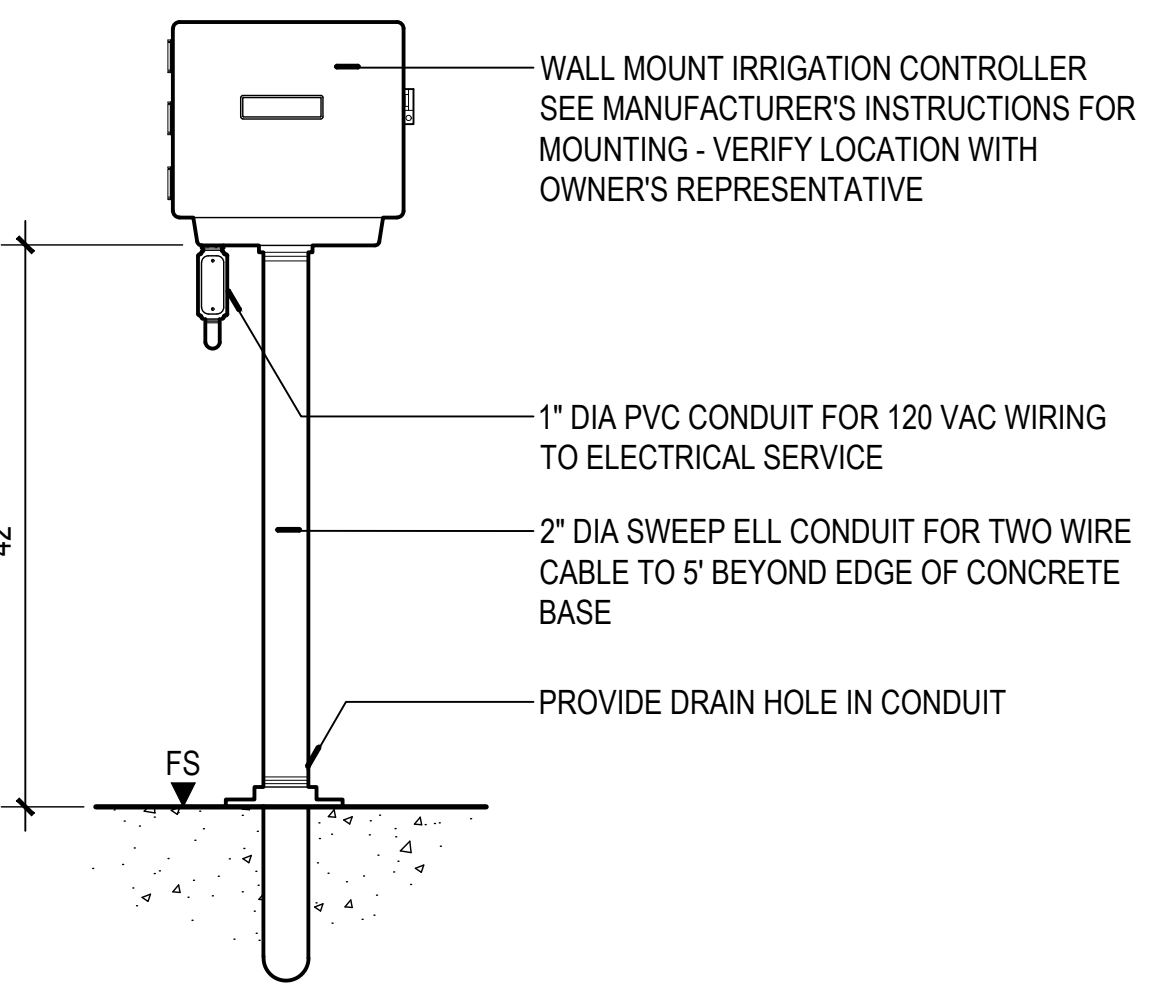
- NOTES:**
1. EXTEND IRRIGATION SLEEVES 24" BEYOND EACH SIDE OF PAVING.
 2. SLEEVE PIPE DIAMETER TO BE A MINIMUM OF TWO TIMES PIPE DIAMETER(S) IT CONTAINS.
 3. 24" MINIMUM DEPTH UNDER PEDESTRIAN WALKS; 36" MINIMUM DEPTH UNDER VEHICULAR PAVING.

TABLE A			
A (NPS)	B	C	D
<4"	6"	4"	8"
4"	10"	4"	8"
6"	10"	4"	8"
8"	10"	6"	10"
10"	10"	6"	10"
12"	12"	6"	10"



5 TRENCHING - SLEEVE UNDER PAVEMENT
SECTION NOT TO SCALE

- NOTES:**
1. ALL WIRES TO BE INSTALLED PER LOCAL CODE.
 2. VERIFY CONTROLLER LOCATION WITH OWNER'S REPRESENTATIVE.
 3. FOLLOW MANUFACTURER'S RECOMMENDATION FOR MOUNTING INSTRUCTIONS.
 4. CONTROLLER SHALL BE HARD-WIRED TO GROUNDED 120 VAC POWER SOURCE.
 5. STEEL CONDUIT FOR ABOVE GRADE AND SCH 40 PVC CONDUIT FOR BELOW GRADE CONDITIONS.
 6. PROVIDE GROUNDING COMPONENTS PER MANUFACTURER'S RECOMMENDATION - INSTALL PER ASIC GUIDELINES



6 CONTROLLER - WALL MOUNT (TWO WIRE)
ELEVATION NOT TO SCALE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUMMARY OF COVERAGE EXTENSIONS

Provision	Name Of Coverage Extension	Included or Limit of Insurance
A.	Miscellaneous Additional Insureds	Included
B.	Expected Or Intended Injury Or Damage	Included
C.	Knowledge Of Occurrence	Included
D.	Legal Liability – Damage To Premises Rented To You (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)	\$300,000
E.	Medical Payments	See Declarations
F.	Mobile Equipment Redefined	Included
G.	Newly Formed Or Acquired Organization, Partnership Or Limited Liability Company And Extended Period Of Coverage	Included
H.	Who Is An Insured – Amendment	Included
I.	Non-Owned Watercraft (Increased to maximum length of less than 51 feet)	Included
J.	Supplementary Payments – Increased Limits	
	1. Bail Bonds	\$ 3,000
	2. Loss Of Earnings	\$ 1,000
K.	Unintentional Omission Or Unintentional Error In Disclosure	Included
L.	Waiver Of Transfer Of Rights Of Recovery Against Others	Included
M.	Liberalization Clause	Included
N.	Incidental Medical Malpractice	Included

The above is a summary only. Please consult the specific provisions that follow for complete information on the extensions provided.

The provisions of the Commercial General Liability Coverage Part apply except as otherwise provided in this endorsement. This endorsement applies only if such Coverage Part is included in this policy.

A. MISCELLANEOUS ADDITIONAL INSUREDS

- 1. Section II – Who Is An Insured** is amended to include as an insured any person or organization (referred to as an additional insured below) described in Paragraphs **A.1.c.(1)** through **A.1.c.(9)** below when you and such person or organization have agreed

in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, provided that:

- a.** The written contract or written agreement is:
 - (1)** Currently in effect or becoming effective during the term of this policy; and
 - (2)** Fully executed by you and the additional insured prior to the "bodily

injury", "property damage" or "personal and advertising injury".

- b. The insurance afforded by this provision does not apply to any person or organization included as an additional insured by a separate endorsement issued by us and made a part of this policy or coverage part.
- c. Only the following persons or organizations are additional insureds under this provision, with coverage for such additional insureds limited as provided herein:

(1) Persons or Organizations For Whom Operations Are Performed

- (a) Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured to your policy; and
- (b) Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph (a) above.
- (c) Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (i) Your acts or omissions; or
 - (ii) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

- (d) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (i) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1.1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

- (1.2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- (ii) "Bodily injury" or "property damage" occurring after:

- (1.1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

- (1.2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(2) Managers Or Lessors Of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to

you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(3) Mortgagee, Assignee Or Receiver

A mortgagee, assignee, or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a covered premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(4) Owners Or Other Interests From Whom Land Has Been Leased

An owner or other interest from whom land has been leased to you but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(5) Lessor Of Leased Equipment

Any person(s) or organization(s) from whom you lease equipment but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their written

contract or written agreement with you for such leased equipment ends.

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

(6) State, Municipality, Governmental Agency Or Subdivision Or Other Political Subdivision – Permits Or Authorizations Relating To Premises

Any state, municipality, governmental agency or subdivision or other political subdivision subject to the following additional provisions:

(a) This insurance applies only with respect to:

(i) The following hazards for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

(1.1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

(1.2) The construction, erection or removal of elevators; or

(1.3) The ownership, maintenance or use of any elevators covered by this insurance.

(ii) Operations performed by you or on your behalf for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization.

- (b) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality, governmental agency or subdivision or other political subdivision.

(7) Controlling Interest

Any person(s) or organization(s) with a controlling interest in the Named Insured but only with respect to their liability arising out of:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such person(s) or organization(s).

(8) Co-Owner Of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owner's liability as co-owner of such premises.

(9) Vendors

- (a) Any person(s) or organization(s) (referred to as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- (i) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a written contract or written agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the written contract or written agreement;
- (ii) Any express warranty unauthorized by you;

- (iii) Any physical or chemical change in the product made intentionally by the vendor;

- (iv) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (v) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (viii) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1.1) The exceptions contained in Sub-paragraphs (iv) or (vi); or

- (1.2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make

in the usual course of business, in connection with the distribution or sale of the products.

- (b) This insurance does not apply to any insured person or organization, from whom you have acquired products, or any ingredient, part or container, entering into, accompanying or containing such products.

2. With respect to coverage provided by this Provision **A. Miscellaneous Additional Insureds**, the following additional provisions apply:

- a. Any insurance provided to an additional insured designated under Paragraphs **A.1.c.(1)** through **A.1.c.(8)** above does not apply:

- (1) To "bodily injury" or "property damage" included within the "products-completed operations hazard"; or

- (2) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.

- b. The insurance afforded to such additional insured only applies to the extent permitted by law.

- c. The insurance afforded to such additional insured will not be broader than that which you are required to provide by the written contract or written agreement.

3. With respect to the insurance afforded to the additional insureds within this Provision **A. Miscellaneous Additional Insureds**, the following is added to **Section III – Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement; or
- b. Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

B. EXPECTED OR INTENDED INJURY OR DAMAGE

Exclusion **2.a. Expected Or Intended Injury of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

C. KNOWLEDGE OF OCCURRENCE

Paragraph **2.a. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;

- (2) A partner, if you are a partnership;

- (3) A manager, if you are a limited liability company; or

- (4) An "executive officer" or the "employee" designated by you to give such notice, if you are an organization other than a partnership or a limited liability company.

To the extent possible, notice should include:

- (i) How, when and where the "occurrence" or offense took place;

- (ii) The names and addresses of any injured persons and witnesses; and

- (iii) The nature and location of any injury or damage arising out of the "occurrence" or offense.

D. LEGAL LIABILITY – DAMAGE TO PREMISES RENTED TO YOU (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)

If damage to premises rented to you is not otherwise excluded from this policy or coverage part, then the following provisions apply:

- 1. Under **Section I – Coverage A – Bodily Injury And Property Damage Liability**, the last paragraph (after the exclusions) is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance**.

2. The paragraph immediately after Sub-paragraph **j.(6)** of Paragraph **2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance**.

3. Paragraph **6.** of **Section III – Limits Of Insurance** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, the greater of:

- a. \$300,000; or
- b. The Damage To Premises Rented To You Limit shown in the Declarations, is the most we will pay under **Coverage A** for damages because of "property damage" to premises while rented to you, or in the case of damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems, while rented to you or temporarily occupied by you with permission of the owner.

This limit will apply to all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, "smoke", leakage from automatic fire protective systems, or other covered causes of loss or any combination thereof.

4. Subparagraph **b.(1)(a)(ii)** of Paragraph **4. Other Insurance of Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

- (ii) That is fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems insurance for premises rented to

you or temporarily occupied by you with permission of the owner;

5. Subparagraph **a.** of Definition **9.** "Insured contract" of **Section V – Definitions** is deleted and replaced by the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

6. As used in this Provision **D. Legal Liability – Damage To Premises Rented To You:**

"Smoke" does not include smoke from agricultural smudging, industrial operations or "hostile fire".

E. MEDICAL PAYMENTS

The Medical Expense Limit is changed, subject to the terms of **Section III – Limits Of Insurance**, to the Medical Expense Limit shown in the Declarations.

F. MOBILE EQUIPMENT REDEFINED

Subparagraph **f.(1)** of Definition **12.** "Mobile equipment" of **Section V – Definitions** is deleted and replaced by the following:

- (1) Equipment with a gross vehicle weight of 1,000 pounds or more and designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

G. NEWLY FORMED OR ACQUIRED ORGANIZATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY AND EXTENDED PERIOD OF COVERAGE

Paragraph **3.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

3. Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or:
- a. Majority interest of more than 50% if you are a corporation;
 - b. Majority interest of more than 50% as a general partner of a newly acquired or formed partnership; and/or

- c. Majority interest of more than 50% as an owner of a newly acquired or formed limited liability company;

will qualify as a Named Insured if there is no other similar insurance available to that organization. However, for these organizations:

- (i) Coverage under this provision is afforded only until the next anniversary date of this policy's effective date after you acquire or form the organization, partnership or limited liability company, or the end of the policy period, whichever is earlier;
- (ii) **Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization, partnership or limited liability company;
- (iii) **Section I – Coverage B – Personal And Advertising Injury Liability** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization, partnership or limited liability company;
- (iv) Coverage applies only when operations of the newly acquired organization, partnership or limited liability company are the same or similar to the operations of insureds already covered under this insurance;
- (v) Coverage only applies for those limited liability companies who have established a date of formation as recorded within the filed state articles of organization, certificates of formation or certificates of organization; and
- (vi) Coverage only applies for those partnerships who have established a date of formation as recorded within a written partnership agreement or partnership certificate.

H. WHO IS AN INSURED – AMENDMENT

The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any:

- a. Current partnership or limited liability company, unless otherwise provided for under Paragraph 3. of **Section II – Who Is An Insured**;
- b. Current joint venture; or

- c. Past partnership, joint venture or limited liability company;

that is not shown as a Named Insured in the Declarations.

I. NON-OWNED WATERCRAFT

Subparagraph (2) of **Exclusion 2.g. Aircraft, Auto Or Watercraft of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge.

J. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

Section I – Supplementary Payments – Coverages A And B is changed as follows:

1. The limit shown in Paragraph 1.b. for the cost of bail bonds is changed from \$250 to \$3,000; and
2. The limit shown in Paragraph 1.d. for loss of earnings because of time off from work is changed from \$250 a day to \$1,000 a day.

K. UNINTENTIONAL OMISSION OR UNINTENTIONAL ERROR IN DISCLOSURE

The following provision is added to Paragraph 6. **Representations of Section IV – Commercial General Liability Conditions**:

However, the unintentional omission of, or unintentional error in, any information given or provided by you shall not prejudice your rights under this insurance.

This provision does not affect our right to collect additional premium or to exercise our right of cancellation or non-renewal.

L. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV – Commercial General Liability Conditions**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" and included in the "products-completed operations hazard" when you have agreed in a written contract or written agreement that any right of recovery is waived for such person or organization. This waiver applies only to the

person(s) or organization(s) agreed to in the written contract or written agreement and is subject to those provisions.

This waiver does not apply unless the written contract or written agreement has been executed prior to the "bodily injury" or "property damage".

However, if any person or organization is separately scheduled on a separate waiver of transfer of rights of recovery which is attached to this policy, then this waiver does not apply.

M. LIBERALIZATION CLAUSE

The following is added to **Section IV – Commercial General Liability Conditions:**

If we adopt a mandatory attachment form change which broadens coverage under this edition of the Commercial General Liability CG0001 for no additional charge, and those changes are intended to apply to all insureds under this edition of CG0001, that change will automatically apply to your insurance as of the date we implement the change in your state. This liberalization clause does not apply to changes implemented through introduction of a subsequent edition of the Commercial General Liability form CG0001.

N. INCIDENTAL MEDICAL MALPRACTICE

1. Paragraph **2.a.(1)(d)** of **Section II – Who Is An Insured** does not apply to a physician, nurse practitioner, physician assistant, nurse, emergency medical technician or paramedic employed by you if you are not in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.
2. This provision is excess over any other valid and collectible insurance whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow Paragraph **4.b.** of **Section IV – Commercial General Liability Conditions.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ULTRA PLATINUM ENHANCEMENT COVERAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CONTRACTORS' COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT
GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

A. General Liability Ultra Plus Endorsement CL CG 04 92, Provision A. Miscellaneous Additional Insureds, is revised as follows:

1. The following is added to **(1) Persons or Organizations For Whom Operations Are Performed, c.(1)**:
 - a. If the written contract specifically requires you to provide additional insured coverage via the 10/01 edition of **CG 20 10** (aka **CG 20 10 10 01**) or via the 11/85 edition of **CG 20 10** (aka **CG 20 10 11 85**), then in paragraph **1.c.(1)(c)**., the words *caused in whole or in part by*, are replaced by the words *arising out of*.
 - b. For purposes of this additional insured coverage, the terms "you" and "your" refer to the Named Insured shown in the Declarations.

B. CONTRACTUAL LIABILITY - RAILROADS

The following coverage is added:

1. With respect to operations performed for a Railroad within 50 feet of railroad property, the definition of "insured contract" in **Section V - Definitions** is replaced by the following:

9. "Insured Contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under

which you assume the tort liability of another party to pay for "bodily injury" or property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including

those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

2. Other Insurance

For purposes of this endorsement, the following is added to the **Section IV - Commercial General Liability Conditions, 4 Other Insurance** condition and supersedes any provision to the contrary.

This insurance is excess of all other insurance that is Railroad Protective Liability or similar coverage for "your work" performed for a Railroad. But, if required by a written contract or written agreement to be primary and noncontributory, this insurance will be primary to and will not seek contribution from any insurance on which the Railroad is a Named Insured.

No other coverage or limit in the policy applies to loss or damage insured by this coverage.

C. AGGREGATE LIMITS OF INSURANCE

The following is added to **COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG 00 01**, General Aggregate Limit under **SECTION III – LIMITS OF INSURANCE**:

The General Aggregate Limit under **SECTION III - LIMITS OF INSURANCE** applies separately to each of your

1. Projects away from premises owned by or rented to you.
2. "Locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

When paragraph **B. Construction Project General Aggregate Limit** on form **CL CG 00 20** is a part of this policy, then this endorsement **CL CG 05 29** paragraph **C. Aggregate Limits Of Insurance** does not apply.

D. BODILY INJURY REDEFINED

The definition of "Bodily injury" in the **Definitions** section of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG 00 01** is replaced by the following:

"Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION
(ADDITIONAL INSURED)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph (v) is added to Paragraph (1)(a) of Paragraph b. **Excess Insurance** under Paragraph 4. **Other Insurance of Section IV – Commercial General Liability Conditions**, as follows:

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(v) That is available to any person or organization who has been added as an additional insured to this policy by endorsement.

However, with respect to an additional insured added by endorsement for liability caused, in whole or in part:

1. By your acts or omissions, or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations; or

(b) In connection with your premises;

2. By your maintenance, operation or use of equipment leased to you by such person or organization; or

3. By "your work" performed for that additional insured and included in the "products-completed operations hazard";

this insurance shall be primary to and will not seek contribution from the additional insured's own insurance if you and such additional insured have agreed prior to loss in a written contract or written agreement, in effect during this policy period, that this insurance be primary and noncontributory as respects liability described in Subparagraph (1)(a)(v)1., (1)(a)(v)2. or (1)(a)(v)3. above. However, this insurance, in all cases, is excess over any other liability insurance available to the additional insured to which such person or organization has been added as an additional insured.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES,
CONTRACTORS OR OTHERS - COMPLETED OPERATIONS
- AUTOMATIC STATUS, INCLUDING PRIMARY
NONCONTRIBUTORY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person(s) or organization(s) when you are obligated by virtue of a written contract or agreement that such person or organization(s) be added as an additional insured to your policy.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" caused, in whole or in part by:

- (1) Acts or omissions of the Named Insured; or
- (2) The acts or omissions of those acting on behalf of the Named Insured;

and included in the "products-completed operations hazard"

This insurance applies only when you are required to add the additional insured by virtue of a written contract or agreement, provided the contract or agreement is:

1. Currently in effect or becomes effective during the term of this policy; and
2. Was executed prior to the "bodily injury" or "property damage" or "personal and advertising injury".

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

For purposes of this endorsement, throughout the policy, the terms "you" and "your" refer to the Named Insured shown in the Declarations.

B. Exclusions

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply to "bodily injury" and "property damage" arising out of:

1. The rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. Subject to Paragraph 3. below, professional services include:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and

b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you or performed by or for the construction manager, its employees or its subcontractors in connection with your ongoing operations.

C. Limits of Insurance

With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

D. Other Insurance

For purposes of this endorsement, the following is added to the **Section IV - Commercial General Liability Conditions, 4. Other Insurance** condition and supersedes any provision to the contrary:

This insurance is excess of all other insurance available to an additional insured whether on a primary, excess, contingent or any other basis. But, if required by a written contract or written agreement to be primary and noncontributory, this insurance will be primary to and will not seek contribution from any insurance on which the additional insured is a Named Insured.

No other coverage or limit in the policy applies to loss or damage insured by this coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE EXPANSION ENDORSEMENT - PLATINUM

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to the coverages provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by this endorsement.

A. NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following is added to Paragraph **A.1. Who Is An Insured of Section II - Covered Autos Liability Coverage**:

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company or any organization excluded either by this Coverage Part or by endorsement, and over which you maintain ownership or majority interest of more than 50 percent will qualify as a Named Insured. However:

1. This insurance does not apply to any newly acquired or formed organization that is an "insured" under any other automobile policy or would be an "insured" under such policy but for its termination or the exhaustion of its Limit of Insurance.
2. Coverage does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
3. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. ADDITIONAL INSURED BY CONTRACT OR AGREEMENT

The following is added to Paragraph **A.1., Who Is An Insured of Section II - Covered Autos Liability Coverage**:

When you have agreed in a written contract or agreement to include a person or organization as an additional "insured", such person or organization is included as an "insured" subject to the following:

1. Such person or organization is an additional "insured" only to the extent such person or organization is liable for "bodily injury" or

"property damage": because of the conduct of an "insured" under Paragraphs **a.** or **b.** under Paragraph **A.1. Who Is An Insured of Section II - Covered Autos Liability Coverage**, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto";

2. The written contract or agreement described above must have been executed prior to the "accident" that caused the "bodily injury" or "property damage" and be in effect at the time of such "accident";
3. The insurance afforded to any such additional "insured" does not apply to any "accident" beyond the period of time required by the written contract or agreement described above;
4. The most we will pay on behalf of such additional "insured(s)" is the lesser of:
 - a. The Limits of Insurance specified in the written contract or agreement described above; or
 - b. The Limits of Insurance shown in the Declarations.

This provision shall not increase the Limit of Insurance shown in the Declarations in this policy or coverage part; and

5. The following changes are made to Paragraph **5. Other Insurance of B. General Conditions under Section IV - Business Auto Conditions**:
 - a. The following is added to Paragraph **5.a.**:

If required by the written contract or agreement described above, the insurance afforded to the additional insured under this provision will be primary to, and will not seek contribution from, the additional insured's own insurance.

b. Paragraph 5.c. is deleted in its entirety.

6. Paragraph A.1.c. under Section II - Covered Autos Liability Coverage is deleted in its entirety.
7. The definition of "insured contract" under Section V - Definitions is amended to add the following:

An "insured contract" does not include that part of any contract or agreement:

That pertains to the ownership, maintenance or use of an "auto" and which indemnifies a person or organization for other than the vicarious liability of such person or organization for "bodily injury" or "property damage" caused by your operation or use of a covered "auto".

However, a person or organization is an additional "insured" under this provision only to the extent such person or organization is not named as an "insured" by separate endorsement to this policy.

C. EMPLOYEES AS INSURED

The following is added to Paragraph A.1. Who Is An Insured Section II - Covered Autos Liability Coverage:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. INCREASED COVERAGE - BAIL BONDS

The Supplementary Payments Coverage Extension of Section II - Covered Autos Liability Coverage is amended as follows:

The Limit of Insurance in paragraph A.2.a.(2) is increased to \$5,000.

E. INCREASED COVERAGE - LOSS OF EARNINGS

The Supplementary Payments Coverage Extension of Section II - Covered Autos Liability Coverage is amended as follows:

The Limit of Insurance in paragraph A.2.a.(4) is increased to \$1,000.

F. FELLOW EMPLOYEE COVERAGE

The Fellow Employee Exclusion contained in Section II - Covered Autos Liability Coverage does not apply. This coverage is excess over any other collectable insurance.

G. COVERAGE EXTENSION - TRANSPORTATION EXPENSES

Paragraph A.4.a. Transportation Expenses of Section III - Physical Damage Coverage is amended as follows:

1. The Limits of Insurance are increased to \$75 per day to a maximum of \$2,500.

2. We will also pay reasonable and necessary expenses to facilitate the return of the stolen "auto" to you.
3. It is agreed and understood and it is our stated intent that expenses incurred by you under the Transportation Expenses Coverage Extension will not also be covered or paid under the Rental Reimbursement Coverage provided by this endorsement or any rental reimbursement coverage added by separate endorsement to this policy.

H. EXTENDED COVERAGE - AIRBAGS

The following is added to Exclusion B.3.a. of Section III - Physical Damage Coverage:

However, this exclusion does not apply to the unintended discharge of an airbag.

This coverage is excess over any other collectible insurance or warranty providing such airbag coverage.

I. AUTO LOAN/LEASE GAP COVERAGE

The following is added to Section III - Physical Damage Coverage, Paragraph C. Limits of Insurance.

4. In the event of a total "loss" to a covered "auto", we will pay the lesser of:
 - a. Any unpaid amount due on the lease or loan for a covered "auto", less:
 - (1) The amount under the Physical Damage Coverage section of the policy; and
 - (2) Any:
 - (a) Overdue lease/loan payments at the time of the "loss";
 - (b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (c) Security deposits not returned by the lessor;
 - (d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - (e) Carry-over balances from previous loans or leases; or
 - b. \$5,000.

However, this provision does not apply to the extent loan/lease gap coverage has been provided by separate endorsement to this policy.

J. GLASS REPAIR - NO DEDUCTIBLE

The following is added to Paragraph **D.** Deductible of Section **III** - Physical Damage Coverage:

Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" to glass when you elect to patch or repair rather than replace the glass.

K. INCREASED COVERAGE - ELECTRONIC EQUIPMENT

The \$1,000 limit indicated in Paragraph **C.1.b.** under Section **III** - Physical Damage Coverage is increased to \$2,500.

L. EXTENDED COVERAGE - PERSONAL PROPERTY

The following is added to Paragraph **A.4.** Coverage Extensions of Section **III** - Physical Damage Coverage:

Physical Damage Coverage on a covered "auto" may be extended to "loss" to your personal property or, if you are an individual, the personal property of a family member, that is in the covered "auto" at the time of "loss" and caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

The insurance provided by this coverage extension is excess over any other collectible insurance. The most we will pay for any one "loss" under this coverage extension is \$500. However, our payment for "loss" to personal property will only be for the account of the owner of the property.

Under this provision, personal property does not include and we will not pay for "loss" of currency, coins, securities or contraband.

No deductible applies to this coverage extension.

M. TOWING

Paragraph **A.2.** Towing of Section **III** - Physical Damage Coverage, is replaced by the following:

If a private passenger type "auto" or light truck "auto" (0-10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$150 for towing and labor costs incurred each time such "auto" is disabled. If a medium, heavy or extra-heavy truck or extra-heavy Truck-tractor "auto" (greater than 10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$250 for towing and labor costs incurred each time such "auto" is disabled. However, the labor must be performed at the place of disablement.

N. FIRE EXTINGUISHER RECHARGE

The following is added to Paragraph **A.4.** Coverage Extensions of Section **IV** - Physical Damage Coverage:

When fire extinguishers are kept in your covered "auto" and any are discharged in an attempt to extinguish a fire, we will pay the lesser of the actual cost of recharging or replacing such fire extinguisher(s).

No deductible applies to this coverage.

O. HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to Paragraph **A.4.** Coverage Extensions of Section **III** - Physical Damage Coverage:

If hired "autos" are covered "autos" for Covered Autos Liability Coverage and if Physical Damage Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, rent, hire or borrow from someone other than your "employees", partners or members of their households subject to the following:

1. The most we will pay in any one "loss" is the lesser of:
 - a. The actual cash value of the "auto";
 - b. The cost to repair or replace the "auto"; or
 - c. \$100,000.
2. Paragraph 1. above is subject to a deductible. The deductible shall be equal to the amount of the highest deductible shown for any owned "auto" of the same classification for that coverage. In the event there is no owned "auto" of the same classification, the highest deductible for any owned "auto" will apply for that coverage.

No deductible will apply to "loss" caused by fire or lightning.
3. Hired Auto Physical Damage Coverage is subject to the following:
 - a. If symbol 8 is shown in the Covered Auto section of the Declarations page for any of the Physical Damage coverages, then the Hired Auto Physical Damage coverage described in this endorsement does not apply.
 - b. Other than indicated in Paragraphs a. directly above, coverage provided under this provision will be excess over any other collectible insurance or coverage.
4. In addition to the limit set forth in Paragraph 1. above we will pay up to \$500 per day, to a maximum of \$3,500 per "loss" for:
 - a. Any costs or fees associated with the "loss" to a hired "auto"; and
 - b. Loss of use of the hired "auto", provided it is the consequence of an "accident" for which you are legally liable, and as a

result of which a monetary loss is sustained by the leasing or rental concern.

However, Paragraph **A.4.b.** Loss of Use Expenses under Section III - Physical Damage Coverage of the Business Auto Coverage Form does not apply.

P. RENTAL REIMBURSEMENT COVERAGE

We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto".

1. Payment applies in addition to the otherwise applicable amount of each coverage you have on the covered "auto".
2. No deductible applies to this coverage.
3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the expiration date of the policy, with the lesser of the following number of days:
 - a. The number of days when the covered "auto" has been repaired or replaced, or
 - b. 45 days.
4. Our payment is limited to the lesser of the following amounts:
 - a. Necessary and actual expenses incurred; or
 - b. Not more than \$75 for any one day;
5. We will pay up to an additional \$300 for the reasonable and necessary expenses you incur to remove your materials and equipment from the covered "auto" and replace such materials and equipment on the rental "auto".
6. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
7. If "loss" results from the total theft of a covered "auto" of the "private passenger type", we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension of the Business Auto Coverage Form or any endorsements thereto.

However, this provision does not apply to the extent that rental reimbursement is provided by separate endorsement to this policy.

Q. DRIVE OTHER CAR COVERAGE

1. The following is added to Section II - Covered Autos Liability Coverage:
 - a. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by:

- (1) You, if you are designated in the Declarations as an individual;
- (2) Your partners or members, if you are designated in the Declarations as a partnership or joint venture;
- (3) Your members or managers, if you are designated in the Declarations as a limited liability company;
- (4) Your executive officers if you are designated in the Declarations as an organization other than an individual, partnership, joint venture or limited liability company; and
- (5) The spouse of any person named in Paragraphs **1.a.(1).** through **1.a.(4)** while a resident of the same household;

Except:

- (a) Any "auto" owned by that individual or by any member of his or her household.
- (b) Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

2. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages

The following is added to **Who Is An Insured:**

Any individual named in **1.a** above and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

3. Changes In Physical Damage Coverage

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in **Q.1.a.** above or his or her spouse while a resident of the same house-hold except:

- a. Any "auto" owned by that individual or by any member of his or her household; or
- b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

4. The most we will pay for the total of all damages under Covered Autos Liability Uninsured Motorists Coverage and Underinsured Motorists Coverage is the Limit Of Insurance shown in the Declarations as applicable to owned "autos".

5. Our obligation to pay for, repair, return or replace damaged or stolen property under Physical Damage Coverage, will be reduced by a deductible equal to the amount of the highest deductible shown for any owned private passenger type "auto" applicable to that coverage. If there are no owned private passenger type "autos", the deductible shall be \$250 for Comprehensive Coverage and \$500 for Collision Coverage. No deductible will apply to "loss" caused by fire or lightning.

6. Additional Definition

As used in this **DRIVE OTHER CAR** Provision:

"Family member" means a person related to the individual named in 1.a. by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

R. KNOWLEDGE OF AN ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to Paragraph **A.2.** of Section **IV** - Business Auto Conditions:

Your obligation to provide prompt notice of an "accident", claim, "suit" or "loss" is satisfied if you or a person designated by you to be responsible for insurance matters is notified of, or in any manner made aware of an "accident", claim, "suit" or "loss" and provides us such notice as soon as practicable

S. WAIVER OF SUBROGATION BY CONTRACT OR AGREEMENT

The following is added to Paragraph **A.5** of Section **IV** - Business Auto Conditions:

We waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" when you and such person or organization have agreed in writing in a contract or agreement to waive such right of recovery, provided:

1. Such written contract or agreement was:
 - a. Made prior to the "accident" or "loss" resulting in the covered "bodily injury" or "property damage"; and
 - b. Was in effect at the time of the covered "bodily injury" or "property damage".
2. The covered "bodily injury" or "property damage" must arise out of the operations specified in such written contract or agreement.
3. At our request you must provide us with a copy of the aforementioned written contract or agreement.

T. UNINTENTIONAL OMISSIONS

The following is added Paragraph **B.2.** of Section **IV** - Business Auto Conditions:

If you fail to disclose any hazards existing at the inception date of this policy, such failure will not prejudice the coverage provided to you. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

U. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

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Carrier no: 20001

Endorsement no: WC000313

SAIF policy: 774651 Paul Brothers Inc

Waiver of Our Right to Recover from Others Endorsement

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Description: ALL OPERATIONS

Contractor name: Persons and/or organizations with whom the insured-employer is required by written contract to waive subrogation rights.

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

Effective date: October 01, 2020

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned September 16, 2020 at Salem, Oregon



Kerry Barnett
President and Chief Executive Officer

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/18/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Propel Insurance Portland Commercial Insurance 805 SW Broadway, Suite 2300 Portland, OR 97205-3363	CONTACT NAME: Kari Motley	PHONE (A/C, No, Ext): 800 499-0933	FAX (A/C, No): 866 577-1326
	E-MAIL ADDRESS: Kari.Motley@propelinsurance.com		
INSURED Paul Brothers Inc. 8601 SE Revenue Rd Boring, OR 97009	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Continental Western Insurance Company		10804
	INSURER B : SAIF Corporation		36196
	INSURER C : Westchester Surplus Lines Insurance Co.		10172
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> PD Ded:1,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			CPA6037287	12/31/2020	12/31/2021	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 WA Stop Gap \$1,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			CPA6037287	12/31/2020	12/31/2021	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED RETENTION \$N/A			CPA6037287	12/31/2020	12/31/2021	EACH OCCURRENCE \$4,000,000 AGGREGATE \$4,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	774651	10/01/2020	10/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Cont. Pollution			G71786407002	12/31/2020	12/31/2021	2,000,000 / Ded: 2,500
A	Leased/Rented EQ			CPA6037287	12/31/2020	12/31/2021	200,000 / Ded: 1,000
A	Installation Fltr			CPA6037287	12/31/2020	12/31/2021	250,000 / Ded: 1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Project #2021-18 - Tri-City Water Resource Recovery Facility ("WRRF") Mitigation
Clackamas County; Water Environment Services, its elected officials, agents, officers, and employees.
Additional insured and waiver of subrogation status applies per the forms attached, if required per written contract.

CERTIFICATE HOLDER Water Environment Services 150 Beaver Creek Rd. Oregon City, OR 97045	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SUMMARY OF COVERAGE EXTENSIONS

Provision	Name Of Coverage Extension	Included or Limit of Insurance
A.	Miscellaneous Additional Insureds	Included
B.	Expected Or Intended Injury Or Damage	Included
C.	Knowledge Of Occurrence	Included
D.	Legal Liability – Damage To Premises Rented To You (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)	\$300,000
E.	Medical Payments	See Declarations
F.	Mobile Equipment Redefined	Included
G.	Newly Formed Or Acquired Organization, Partnership Or Limited Liability Company And Extended Period Of Coverage	Included
H.	Who Is An Insured – Amendment	Included
I.	Non-Owned Watercraft (Increased to maximum length of less than 51 feet)	Included
J.	Supplementary Payments – Increased Limits	
	1. Bail Bonds	\$ 3,000
	2. Loss Of Earnings	\$ 1,000
K.	Unintentional Omission Or Unintentional Error In Disclosure	Included
L.	Waiver Of Transfer Of Rights Of Recovery Against Others	Included
M.	Liberalization Clause	Included
N.	Incidental Medical Malpractice	Included

The above is a summary only. Please consult the specific provisions that follow for complete information on the extensions provided.

The provisions of the Commercial General Liability Coverage Part apply except as otherwise provided in this endorsement. This endorsement applies only if such Coverage Part is included in this policy.

A. MISCELLANEOUS ADDITIONAL INSUREDS

- 1. Section II – Who Is An Insured** is amended to include as an insured any person or organization (referred to as an additional insured below) described in Paragraphs **A.1.c.(1)** through **A.1.c.(9)** below when you and such person or organization have agreed

in writing in a contract or agreement that such person or organization be added as an additional insured on your policy, provided that:

- a.** The written contract or written agreement is:
 - (1)** Currently in effect or becoming effective during the term of this policy; and
 - (2)** Fully executed by you and the additional insured prior to the "bodily

injury", "property damage" or "personal and advertising injury".

- b. The insurance afforded by this provision does not apply to any person or organization included as an additional insured by a separate endorsement issued by us and made a part of this policy or coverage part.
- c. Only the following persons or organizations are additional insureds under this provision, with coverage for such additional insureds limited as provided herein:

(1) Persons or Organizations For Whom Operations Are Performed

- (a) Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured to your policy; and
- (b) Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph (a) above.
- (c) Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (i) Your acts or omissions; or
 - (ii) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

- (d) With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- (i) "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1.1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

- (1.2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

- (ii) "Bodily injury" or "property damage" occurring after:

- (1.1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

- (1.2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(2) Managers Or Lessors Of Premises

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to

you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(3) Mortgagee, Assignee Or Receiver

A mortgagee, assignee, or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a covered premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(4) Owners Or Other Interests From Whom Land Has Been Leased

An owner or other interest from whom land has been leased to you but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to lease that land.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

(5) Lessor Of Leased Equipment

Any person(s) or organization(s) from whom you lease equipment but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

A person's or organization's status as an additional insured under this endorsement ends when their written

contract or written agreement with you for such leased equipment ends.

This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

(6) State, Municipality, Governmental Agency Or Subdivision Or Other Political Subdivision – Permits Or Authorizations Relating To Premises

Any state, municipality, governmental agency or subdivision or other political subdivision subject to the following additional provisions:

(a) This insurance applies only with respect to:

(i) The following hazards for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

(1.1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

(1.2) The construction, erection or removal of elevators; or

(1.3) The ownership, maintenance or use of any elevators covered by this insurance.

(ii) Operations performed by you or on your behalf for which the state, municipality, governmental agency or subdivision or other political subdivision has issued a permit or authorization.

- (b) This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality, governmental agency or subdivision or other political subdivision.

(7) Controlling Interest

Any person(s) or organization(s) with a controlling interest in the Named Insured but only with respect to their liability arising out of:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such person(s) or organization(s).

(8) Co-Owner Of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owner's liability as co-owner of such premises.

(9) Vendors

- (a) Any person(s) or organization(s) (referred to as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.

The insurance afforded the vendor does not apply to:

- (i) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a written contract or written agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the written contract or written agreement;
- (ii) Any express warranty unauthorized by you;

- (iii) Any physical or chemical change in the product made intentionally by the vendor;

- (iv) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- (v) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

- (vi) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (vii) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

- (viii) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1.1) The exceptions contained in Sub-paragraphs (iv) or (vi); or

- (1.2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make

in the usual course of business, in connection with the distribution or sale of the products.

- (b) This insurance does not apply to any insured person or organization, from whom you have acquired products, or any ingredient, part or container, entering into, accompanying or containing such products.

2. With respect to coverage provided by this Provision **A. Miscellaneous Additional Insureds**, the following additional provisions apply:

- a. Any insurance provided to an additional insured designated under Paragraphs **A.1.c.(1)** through **A.1.c.(8)** above does not apply:

- (1) To "bodily injury" or "property damage" included within the "products-completed operations hazard"; or

- (2) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.

- b. The insurance afforded to such additional insured only applies to the extent permitted by law.

- c. The insurance afforded to such additional insured will not be broader than that which you are required to provide by the written contract or written agreement.

3. With respect to the insurance afforded to the additional insureds within this Provision **A. Miscellaneous Additional Insureds**, the following is added to **Section III – Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement; or
- b. Available under the applicable Limits Of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits Of Insurance shown in the Declarations.

B. EXPECTED OR INTENDED INJURY OR DAMAGE

Exclusion **2.a. Expected Or Intended Injury of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

C. KNOWLEDGE OF OCCURRENCE

Paragraph **2.a. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;

- (2) A partner, if you are a partnership;

- (3) A manager, if you are a limited liability company; or

- (4) An "executive officer" or the "employee" designated by you to give such notice, if you are an organization other than a partnership or a limited liability company.

To the extent possible, notice should include:

- (i) How, when and where the "occurrence" or offense took place;

- (ii) The names and addresses of any injured persons and witnesses; and

- (iii) The nature and location of any injury or damage arising out of the "occurrence" or offense.

D. LEGAL LIABILITY – DAMAGE TO PREMISES RENTED TO YOU (Fire, Lightning, Explosion, Smoke, Or Leakage From Automatic Fire Protective Systems)

If damage to premises rented to you is not otherwise excluded from this policy or coverage part, then the following provisions apply:

- 1. Under **Section I – Coverage A – Bodily Injury And Property Damage Liability**, the last paragraph (after the exclusions) is deleted and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **Section III – Limits Of Insurance**.

2. The paragraph immediately after Sub-paragraph **j.(6)** of Paragraph **2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance**.

3. Paragraph **6.** of **Section III – Limits Of Insurance** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, the greater of:

- a. \$300,000; or
- b. The Damage To Premises Rented To You Limit shown in the Declarations, is the most we will pay under **Coverage A** for damages because of "property damage" to premises while rented to you, or in the case of damage by fire, lightning, explosion, "smoke", or leakage from automatic fire protective systems, while rented to you or temporarily occupied by you with permission of the owner.

This limit will apply to all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, "smoke", leakage from automatic fire protective systems, or other covered causes of loss or any combination thereof.

4. Subparagraph **b.(1)(a)(ii)** of Paragraph **4. Other Insurance of Section IV – Commercial General Liability Conditions** is deleted and replaced by the following:

- (ii) That is fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems insurance for premises rented to

you or temporarily occupied by you with permission of the owner;

5. Subparagraph **a.** of Definition **9.** "Insured contract" of **Section V – Definitions** is deleted and replaced by the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, "smoke" or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract".

6. As used in this Provision **D. Legal Liability – Damage To Premises Rented To You:**

"Smoke" does not include smoke from agricultural smudging, industrial operations or "hostile fire".

E. MEDICAL PAYMENTS

The Medical Expense Limit is changed, subject to the terms of **Section III – Limits Of Insurance**, to the Medical Expense Limit shown in the Declarations.

F. MOBILE EQUIPMENT REDEFINED

Subparagraph **f.(1)** of Definition **12.** "Mobile equipment" of **Section V – Definitions** is deleted and replaced by the following:

- (1) Equipment with a gross vehicle weight of 1,000 pounds or more and designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

G. NEWLY FORMED OR ACQUIRED ORGANIZATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY AND EXTENDED PERIOD OF COVERAGE

Paragraph **3.** of **Section II – Who Is An Insured** is deleted and replaced by the following:

3. Any organization you newly acquire or form, other than a joint venture, and over which you maintain ownership or:
- a. Majority interest of more than 50% if you are a corporation;
 - b. Majority interest of more than 50% as a general partner of a newly acquired or formed partnership; and/or

- c. Majority interest of more than 50% as an owner of a newly acquired or formed limited liability company;

will qualify as a Named Insured if there is no other similar insurance available to that organization. However, for these organizations:

- (i) Coverage under this provision is afforded only until the next anniversary date of this policy's effective date after you acquire or form the organization, partnership or limited liability company, or the end of the policy period, whichever is earlier;
- (ii) **Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization, partnership or limited liability company;
- (iii) **Section I – Coverage B – Personal And Advertising Injury Liability** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization, partnership or limited liability company;
- (iv) Coverage applies only when operations of the newly acquired organization, partnership or limited liability company are the same or similar to the operations of insureds already covered under this insurance;
- (v) Coverage only applies for those limited liability companies who have established a date of formation as recorded within the filed state articles of organization, certificates of formation or certificates of organization; and
- (vi) Coverage only applies for those partnerships who have established a date of formation as recorded within a written partnership agreement or partnership certificate.

H. WHO IS AN INSURED – AMENDMENT

The last paragraph of **Section II – Who Is An Insured** is deleted and replaced by the following:

No person or organization is an insured with respect to the conduct of any:

- a. Current partnership or limited liability company, unless otherwise provided for under Paragraph 3. of **Section II – Who Is An Insured**;
- b. Current joint venture; or

- c. Past partnership, joint venture or limited liability company;

that is not shown as a Named Insured in the Declarations.

I. NON-OWNED WATERCRAFT

Subparagraph (2) of **Exclusion 2.g. Aircraft, Auto Or Watercraft** of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is deleted and replaced by the following:

- (2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge.

J. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

Section I – Supplementary Payments – Coverages A And B is changed as follows:

1. The limit shown in Paragraph 1.b. for the cost of bail bonds is changed from \$250 to \$3,000; and
2. The limit shown in Paragraph 1.d. for loss of earnings because of time off from work is changed from \$250 a day to \$1,000 a day.

K. UNINTENTIONAL OMISSION OR UNINTENTIONAL ERROR IN DISCLOSURE

The following provision is added to Paragraph 6. **Representations** of **Section IV – Commercial General Liability Conditions**:

However, the unintentional omission of, or unintentional error in, any information given or provided by you shall not prejudice your rights under this insurance.

This provision does not affect our right to collect additional premium or to exercise our right of cancellation or non-renewal.

L. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Commercial General Liability Conditions**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" and included in the "products-completed operations hazard" when you have agreed in a written contract or written agreement that any right of recovery is waived for such person or organization. This waiver applies only to the

person(s) or organization(s) agreed to in the written contract or written agreement and is subject to those provisions.

This waiver does not apply unless the written contract or written agreement has been executed prior to the "bodily injury" or "property damage".

However, if any person or organization is separately scheduled on a separate waiver of transfer of rights of recovery which is attached to this policy, then this waiver does not apply.

M. LIBERALIZATION CLAUSE

The following is added to **Section IV – Commercial General Liability Conditions:**

If we adopt a mandatory attachment form change which broadens coverage under this edition of the Commercial General Liability CG0001 for no additional charge, and those changes are intended to apply to all insureds under this edition of CG0001, that change will automatically apply to your insurance as of the date we implement the change in your state. This liberalization clause does not apply to changes implemented through introduction of a subsequent edition of the Commercial General Liability form CG0001.

N. INCIDENTAL MEDICAL MALPRACTICE

1. Paragraph **2.a.(1)(d)** of **Section II – Who Is An Insured** does not apply to a physician, nurse practitioner, physician assistant, nurse, emergency medical technician or paramedic employed by you if you are not in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.
2. This provision is excess over any other valid and collectible insurance whether such insurance is primary, excess, contingent or on any other basis. Any payments by us will follow Paragraph **4.b.** of **Section IV – Commercial General Liability Conditions.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ULTRA PLATINUM ENHANCEMENT COVERAGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CONTRACTORS' COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT
GENERAL LIABILITY ULTRA PLUS ENDORSEMENT

A. General Liability Ultra Plus Endorsement CL CG 04 92, Provision A. Miscellaneous Additional Insureds,
is revised as follows:

1. The following is added to **(1) Persons or Organizations For Whom Operations Are Performed, c.(1)**:
 - a. If the written contract specifically requires you to provide additional insured coverage via the 10/01 edition of **CG 20 10** (aka **CG 20 10 10 01**) or via the 11/85 edition of **CG 20 10** (aka **CG 20 10 11 85**), then in paragraph **1.c.(1)(c)**., the words *caused in whole or in part by*, are replaced by the words *arising out of*.
 - b. For purposes of this additional insured coverage, the terms "you" and "your" refer to the Named Insured shown in the Declarations.

B. CONTRACTUAL LIABILITY - RAILROADS

The following coverage is added:

1. With respect to operations performed for a Railroad within 50 feet of railroad property, the definition of "insured contract" in **Section V - Definitions** is replaced by the following:

9. "Insured Contract" means:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including

those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

2. Other Insurance

For purposes of this endorsement, the following is added to the **Section IV - Commercial General Liability Conditions, 4 Other Insurance** condition and supersedes any provision to the contrary.

This insurance is excess of all other insurance that is Railroad Protective Liability or similar coverage for "your work" performed for a Railroad. But, if required by a written contract or written agreement to be primary and noncontributory, this insurance will be primary to and will not seek contribution from any insurance on which the Railroad is a Named Insured.

No other coverage or limit in the policy applies to loss or damage insured by this coverage.

C. AGGREGATE LIMITS OF INSURANCE

The following is added to **COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG 00 01**, General Aggregate Limit under **SECTION III – LIMITS OF INSURANCE**:

The General Aggregate Limit under **SECTION III - LIMITS OF INSURANCE** applies separately to each of your

1. Projects away from premises owned by or rented to you.
2. "Locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

When paragraph **B. Construction Project General Aggregate Limit** on form **CL CG 00 20** is a part of this policy, then this endorsement **CL CG 05 29** paragraph **C. Aggregate Limits Of Insurance** does not apply.

D. BODILY INJURY REDEFINED

The definition of "Bodily injury" in the **Definitions** section of the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM CG 00 01** is replaced by the following:

"Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY –
OTHER INSURANCE CONDITION
(ADDITIONAL INSURED)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph (v) is added to Paragraph (1)(a) of Paragraph b. **Excess Insurance** under Paragraph 4. **Other Insurance of Section IV – Commercial General Liability Conditions**, as follows:

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(v) That is available to any person or organization who has been added as an additional insured to this policy by endorsement.

However, with respect to an additional insured added by endorsement for liability caused, in whole or in part:

1. By your acts or omissions, or the acts or omissions of those acting on your behalf:

(a) In the performance of your ongoing operations; or

(b) In connection with your premises;

2. By your maintenance, operation or use of equipment leased to you by such person or organization; or

3. By "your work" performed for that additional insured and included in the "products-completed operations hazard";

this insurance shall be primary to and will not seek contribution from the additional insured's own insurance if you and such additional insured have agreed prior to loss in a written contract or written agreement, in effect during this policy period, that this insurance be primary and noncontributory as respects liability described in Subparagraph (1)(a)(v)1., (1)(a)(v)2. or (1)(a)(v)3. above. However, this insurance, in all cases, is excess over any other liability insurance available to the additional insured to which such person or organization has been added as an additional insured.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES,
CONTRACTORS OR OTHERS - COMPLETED OPERATIONS
- AUTOMATIC STATUS, INCLUDING PRIMARY
NONCONTRIBUTORY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION II - WHO IS AN INSURED is amended to include as an additional insured any person(s) or organization(s) when you are obligated by virtue of a written contract or agreement that such person or organization(s) be added as an additional insured to your policy.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury" or "property damage" or "personal and advertising injury" caused, in whole or in part by:

- (1) Acts or omissions of the Named Insured; or
- (2) The acts or omissions of those acting on behalf of the Named Insured;

and included in the "products-completed operations hazard"

This insurance applies only when you are required to add the additional insured by virtue of a written contract or agreement, provided the contract or agreement is:

1. Currently in effect or becomes effective during the term of this policy; and
2. Was executed prior to the "bodily injury" or "property damage" or "personal and advertising injury".

However:

- a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
- b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

For purposes of this endorsement, throughout the policy, the terms "you" and "your" refer to the Named Insured shown in the Declarations.

B. Exclusions

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply to "bodily injury" and "property damage" arising out of:

1. The rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. Subject to Paragraph 3. below, professional services include:
 - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and

b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you or performed by or for the construction manager, its employees or its subcontractors in connection with your ongoing operations.

C. Limits of Insurance

With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

D. Other Insurance

For purposes of this endorsement, the following is added to the **Section IV - Commercial General Liability Conditions, 4. Other Insurance** condition and supersedes any provision to the contrary:

This insurance is excess of all other insurance available to an additional insured whether on a primary, excess, contingent or any other basis. But, if required by a written contract or written agreement to be primary and noncontributory, this insurance will be primary to and will not seek contribution from any insurance on which the additional insured is a Named Insured.

No other coverage or limit in the policy applies to loss or damage insured by this coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE EXPANSION ENDORSEMENT - PLATINUM

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to the coverages provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by this endorsement.

A. NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following is added to Paragraph **A.1. Who Is An Insured of Section II - Covered Autos Liability Coverage**:

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company or any organization excluded either by this Coverage Part or by endorsement, and over which you maintain ownership or majority interest of more than 50 percent will qualify as a Named Insured. However:

1. This insurance does not apply to any newly acquired or formed organization that is an "insured" under any other automobile policy or would be an "insured" under such policy but for its termination or the exhaustion of its Limit of Insurance.
2. Coverage does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
3. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. ADDITIONAL INSURED BY CONTRACT OR AGREEMENT

The following is added to Paragraph **A.1., Who Is An Insured of Section II - Covered Autos Liability Coverage**:

When you have agreed in a written contract or agreement to include a person or organization as an additional "insured", such person or organization is included as an "insured" subject to the following:

1. Such person or organization is an additional "insured" only to the extent such person or organization is liable for "bodily injury" or

"property damage": because of the conduct of an "insured" under Paragraphs **a.** or **b.** under Paragraph **A.1. Who Is An Insured of Section II - Covered Autos Liability Coverage**, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto";

2. The written contract or agreement described above must have been executed prior to the "accident" that caused the "bodily injury" or "property damage" and be in effect at the time of such "accident";
3. The insurance afforded to any such additional "insured" does not apply to any "accident" beyond the period of time required by the written contract or agreement described above;
4. The most we will pay on behalf of such additional "insured(s)" is the lesser of:
 - a. The Limits of Insurance specified in the written contract or agreement described above; or
 - b. The Limits of Insurance shown in the Declarations.

This provision shall not increase the Limit of Insurance shown in the Declarations in this policy or coverage part; and

5. The following changes are made to Paragraph **5. Other Insurance of B. General Conditions under Section IV - Business Auto Conditions**:
 - a. The following is added to Paragraph **5.a.**:

If required by the written contract or agreement described above, the insurance afforded to the additional insured under this provision will be primary to, and will not seek contribution from, the additional insured's own insurance.

b. Paragraph 5.c. is deleted in its entirety.

6. Paragraph A.1.c. under Section II - Covered Autos Liability Coverage is deleted in its entirety.

7. The definition of "insured contract" under Section V - Definitions is amended to add the following:

An "insured contract" does not include that part of any contract or agreement:

That pertains to the ownership, maintenance or use of an "auto" and which indemnifies a person or organization for other than the vicarious liability of such person or organization for "bodily injury" or "property damage" caused by your operation or use of a covered "auto".

However, a person or organization is an additional "insured" under this provision only to the extent such person or organization is not named as an "insured" by separate endorsement to this policy.

C. EMPLOYEES AS INSURED

The following is added to Paragraph A.1. Who Is An Insured Section II - Covered Autos Liability Coverage:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

D. INCREASED COVERAGE - BAIL BONDS

The Supplementary Payments Coverage Extension of Section II - Covered Autos Liability Coverage is amended as follows:

The Limit of Insurance in paragraph A.2.a.(2) is increased to \$5,000.

E. INCREASED COVERAGE - LOSS OF EARNINGS

The Supplementary Payments Coverage Extension of Section II - Covered Autos Liability Coverage is amended as follows:

The Limit of Insurance in paragraph A.2.a.(4) is increased to \$1,000.

F. FELLOW EMPLOYEE COVERAGE

The Fellow Employee Exclusion contained in Section II - Covered Autos Liability Coverage does not apply. This coverage is excess over any other collectable insurance.

G. COVERAGE EXTENSION - TRANSPORTATION EXPENSES

Paragraph A.4.a. Transportation Expenses of Section III - Physical Damage Coverage is amended as follows:

1. The Limits of Insurance are increased to \$75 per day to a maximum of \$2,500.

2. We will also pay reasonable and necessary expenses to facilitate the return of the stolen "auto" to you.

3. It is agreed and understood and it is our stated intent that expenses incurred by you under the Transportation Expenses Coverage Extension will not also be covered or paid under the Rental Reimbursement Coverage provided by this endorsement or any rental reimbursement coverage added by separate endorsement to this policy.

H. EXTENDED COVERAGE - AIRBAGS

The following is added to Exclusion B.3.a. of Section III - Physical Damage Coverage:

However, this exclusion does not apply to the unintended discharge of an airbag.

This coverage is excess over any other collectible insurance or warranty providing such airbag coverage.

I. AUTO LOAN/LEASE GAP COVERAGE

The following is added to Section III - Physical Damage Coverage, Paragraph C. Limits of Insurance.

4. In the event of a total "loss" to a covered "auto", we will pay the lesser of:

a. Any unpaid amount due on the lease or loan for a covered "auto", less:

(1) The amount under the Physical Damage Coverage section of the policy; and

(2) Any:

(a) Overdue lease/loan payments at the time of the "loss";

(b) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

(c) Security deposits not returned by the lessor;

(d) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

(e) Carry-over balances from previous loans or leases; or

b. \$5,000.

However, this provision does not apply to the extent loan/lease gap coverage has been provided by separate endorsement to this policy.

J. GLASS REPAIR - NO DEDUCTIBLE

The following is added to Paragraph **D.** Deductible of Section **III** - Physical Damage Coverage:

Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" to glass when you elect to patch or repair rather than replace the glass.

K. INCREASED COVERAGE - ELECTRONIC EQUIPMENT

The \$1,000 limit indicated in Paragraph **C.1.b.** under Section **III** - Physical Damage Coverage is increased to \$2,500.

L. EXTENDED COVERAGE - PERSONAL PROPERTY

The following is added to Paragraph **A.4.** Coverage Extensions of Section **III** - Physical Damage Coverage:

Physical Damage Coverage on a covered "auto" may be extended to "loss" to your personal property or, if you are an individual, the personal property of a family member, that is in the covered "auto" at the time of "loss" and caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

The insurance provided by this coverage extension is excess over any other collectible insurance. The most we will pay for any one "loss" under this coverage extension is \$500. However, our payment for "loss" to personal property will only be for the account of the owner of the property.

Under this provision, personal property does not include and we will not pay for "loss" of currency, coins, securities or contraband.

No deductible applies to this coverage extension.

M. TOWING

Paragraph **A.2.** Towing of Section **III** - Physical Damage Coverage, is replaced by the following:

If a private passenger type "auto" or light truck "auto" (0-10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$150 for towing and labor costs incurred each time such "auto" is disabled. If a medium, heavy or extra-heavy truck or extra-heavy Truck-tractor "auto" (greater than 10,000 Lbs. GVW) is provided both Comprehensive and Collision Coverage, we will pay up to \$250 for towing and labor costs incurred each time such "auto" is disabled. However, the labor must be performed at the place of disablement.

N. FIRE EXTINGUISHER RECHARGE

The following is added to Paragraph **A.4.** Coverage Extensions of Section **IV** - Physical Damage Coverage:

When fire extinguishers are kept in your covered "auto" and any are discharged in an attempt to extinguish a fire, we will pay the lesser of the actual cost of recharging or replacing such fire extinguisher(s).

No deductible applies to this coverage.

O. HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to Paragraph **A.4.** Coverage Extensions of Section **III** - Physical Damage Coverage:

If hired "autos" are covered "autos" for Covered Autos Liability Coverage and if Physical Damage Coverage is provided for any "auto" you own, then the Physical Damage coverages provided are extended to "autos" you lease, rent, hire or borrow from someone other than your "employees", partners or members of their households subject to the following:

1. The most we will pay in any one "loss" is the lesser of:
 - a. The actual cash value of the "auto";
 - b. The cost to repair or replace the "auto"; or
 - c. \$100,000.
2. Paragraph 1. above is subject to a deductible. The deductible shall be equal to the amount of the highest deductible shown for any owned "auto" of the same classification for that coverage. In the event there is no owned "auto" of the same classification, the highest deductible for any owned "auto" will apply for that coverage.

No deductible will apply to "loss" caused by fire or lightning.
3. Hired Auto Physical Damage Coverage is subject to the following:
 - a. If symbol 8 is shown in the Covered Auto section of the Declarations page for any of the Physical Damage coverages, then the Hired Auto Physical Damage coverage described in this endorsement does not apply.
 - b. Other than indicated in Paragraphs a. directly above, coverage provided under this provision will be excess over any other collectible insurance or coverage.
4. In addition to the limit set forth in Paragraph 1. above we will pay up to \$500 per day, to a maximum of \$3,500 per "loss" for:
 - a. Any costs or fees associated with the "loss" to a hired "auto"; and
 - b. Loss of use of the hired "auto", provided it is the consequence of an "accident" for which you are legally liable, and as a

result of which a monetary loss is sustained by the leasing or rental concern.

However, Paragraph **A.4.b.** Loss of Use Expenses under Section III - Physical Damage Coverage of the Business Auto Coverage Form does not apply.

P. RENTAL REIMBURSEMENT COVERAGE

We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto".

1. Payment applies in addition to the otherwise applicable amount of each coverage you have on the covered "auto".
2. No deductible applies to this coverage.
3. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the expiration date of the policy, with the lesser of the following number of days:
 - a. The number of days when the covered "auto" has been repaired or replaced, or
 - b. 45 days.
4. Our payment is limited to the lesser of the following amounts:
 - a. Necessary and actual expenses incurred; or
 - b. Not more than \$75 for any one day;
5. We will pay up to an additional \$300 for the reasonable and necessary expenses you incur to remove your materials and equipment from the covered "auto" and replace such materials and equipment on the rental "auto".
6. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
7. If "loss" results from the total theft of a covered "auto" of the "private passenger type", we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension of the Business Auto Coverage Form or any endorsements thereto.

However, this provision does not apply to the extent that rental reimbursement is provided by separate endorsement to this policy.

Q. DRIVE OTHER CAR COVERAGE

1. The following is added to Section II - Covered Autos Liability Coverage:
 - a. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by:

- (1) You, if you are designated in the Declarations as an individual;
- (2) Your partners or members, if you are designated in the Declarations as a partnership or joint venture;
- (3) Your members or managers, if you are designated in the Declarations as a limited liability company;
- (4) Your executive officers if you are designated in the Declarations as an organization other than an individual, partnership, joint venture or limited liability company; and
- (5) The spouse of any person named in Paragraphs **1.a.(1)** through **1.a.(4)** while a resident of the same household;

Except:

- (a) Any "auto" owned by that individual or by any member of his or her household.
- (b) Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

2. Changes in Auto Medical Payments And Uninsured And Underinsured Motorists Coverages

The following is added to **Who Is An Insured**:

Any individual named in **1.a** above and his or her "family members" are "insured" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

3. Changes In Physical Damage Coverage

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in **Q.1.a.** above or his or her spouse while a resident of the same house-hold except:

- a. Any "auto" owned by that individual or by any member of his or her household; or
- b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

4. The most we will pay for the total of all damages under Covered Autos Liability Uninsured Motorists Coverage and Underinsured Motorists Coverage is the Limit Of Insurance shown in the Declarations as applicable to owned "autos".

5. Our obligation to pay for, repair, return or replace damaged or stolen property under Physical Damage Coverage, will be reduced by a deductible equal to the amount of the highest deductible shown for any owned private passenger type "auto" applicable to that coverage. If there are no owned private passenger type "autos", the deductible shall be \$250 for Comprehensive Coverage and \$500 for Collision Coverage. No deductible will apply to "loss" caused by fire or lightning.

6. Additional Definition

As used in this **DRIVE OTHER CAR** Provision:

"Family member" means a person related to the individual named in 1.a. by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

R. KNOWLEDGE OF AN ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to Paragraph **A.2.** of Section **IV** - Business Auto Conditions:

Your obligation to provide prompt notice of an "accident", claim, "suit" or "loss" is satisfied if you or a person designated by you to be responsible for insurance matters is notified of, or in any manner made aware of an "accident", claim, "suit" or "loss" and provides us such notice as soon as practicable

S. WAIVER OF SUBROGATION BY CONTRACT OR AGREEMENT

The following is added to Paragraph **A.5** of Section **IV** - Business Auto Conditions:

We waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" when you and such person or organization have agreed in writing in a contract or agreement to waive such right of recovery, provided:

1. Such written contract or agreement was:
 - a. Made prior to the "accident" or "loss" resulting in the covered "bodily injury" or "property damage"; and
 - b. Was in effect at the time of the covered "bodily injury" or "property damage".
2. The covered "bodily injury" or "property damage" must arise out of the operations specified in such written contract or agreement.
3. At our request you must provide us with a copy of the aforementioned written contract or agreement.

T. UNINTENTIONAL OMISSIONS

The following is added Paragraph **B.2.** of Section **IV** - Business Auto Conditions:

If you fail to disclose any hazards existing at the inception date of this policy, such failure will not prejudice the coverage provided to you. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

U. LIBERALIZATION

If we revise this endorsement to provide greater coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

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Carrier no: 20001

Endorsement no: WC000313

SAIF policy: 774651 Paul Brothers Inc

Waiver of Our Right to Recover from Others Endorsement

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Description: ALL OPERATIONS

Contractor name: Persons and/or organizations with whom the insured-employer is required by written contract to waive subrogation rights.

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

Effective date: October 01, 2020

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned September 16, 2020 at Salem, Oregon



Kerry Barnett
President and Chief Executive Officer

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