



Commissioners encourage public to attend public meeting digitally.

BOARD OF COUNTY COMMISSIONERS
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

AGENDA

Thursday December 10, 2020 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2020-85

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*** Wildfire Update

*** COVID-19 Update

I. 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 an Intergovernmental Agreement with the Gladstone School District for the Food Pantry Program – *Public Health*
2. Approval of an Intergovernmental Agreement with Water Environment Services– *Public Health*
3. Approval of an Amendment #12 to Intergovernmental Agreement #159159 with the State of Oregon, Acting by and through its Oregon Health Authority, for the operation and financing of Community Mental Health, Addiction Treatment, Recovery & Prevention Services, and Problem Gambling Programs – *Behavioral Health*
4. Approval of an Intergovernmental Agreement with Multnomah County for Psychiatric Consultation Services - *Behavioral Health*
5. Approval of Intergovernmental Agreement with Clackamas County District Attorney's Office for a Legal Assistant to support mutual clients in the adult drug court program – *Health Centers*

B. Department of Transportation & Development

1. Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the South End Road at Milepost 3.8 Project and Authorizing Good Faith Negotiations and Condemnation Actions.
2. Approval of a Contract with PBS Engineering & Environmental, Inc. for the Redland Road Turn Lanes at Ferguson and Bradley Project- *Procurement*
3. Approval of a Government Addendum with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Kaiser Creek Solar Project- *Procurement*
4. Approval of a Government Addendum with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Sandy River Solar Project- *Procurement*
5. Approval of a Government Addendum with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Dunn Project- *Procurement*
6. Approval of a Government Addendum with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Mt. Hope Project- *Procurement*
7. Approval of Personal Services Contract with Harper Houf Peterson Righellis Inc. To provide Monroe Street Improvements for The Development Agency- *Procurement*

C. Business & Community Services

1. Approval of Local Grant Agreement between Clackamas County and Micro Enterprise Services of Oregon (MESO) for MESO to provide a small grants program on behalf of Clackamas County in an effort to support the local business and childcare provider community impacted by the COVID-19 pandemic

D. Juvenile Department

1. Approval of Amendment to an Intergovernmental Agreement With Oregon Health Authority for Behavioral Rehabilitation Services (BRS) Reimbursements

E. Disaster Management

1. Approval to Apply for FY2020 Emergency Management Performance Grant between Clackamas County and the State of Oregon
2. Approval of Letter of Promulgation extending the promulgation date from March 31, 2021 to March 31, 2022

II. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Amendment #2 to the Cooperative Intergovernmental Agreement between the City of Milwaukie and the North Clackamas Parks and Recreation District (NCPRD)

III. WATER ENVIRONMENT SERVICES

1. Approval of an Intergovernmental Agreement between the City of Gladstone and Water Environment Services Pertaining to Joint Collection System Work
2. Approval of Contract between Water Environment Services and Hach Company to provide Flow Meters – *Procurement*

IV. 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.*

V. COUNTY ADMINISTRATOR UPDATE

VI. COMMISSIONERS COMMUNICATION

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

December 10, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the
Gladstone School District for the Food Pantry Program.

Purpose/Outcomes	The Gladstone School District is a recipient of the Blueprint Grants Program. They will enhance their food pantry by connecting clients with wrap around services and education on nutrition.
Dollar Amount and Fiscal Impact	Contract maximum value \$40,000.
Funding Source	Clackamas County Public Health Division approved budget. No Additional County General Funds are involved.
Duration	Effective July 01, 2020 and terminates on June 30, 2021
Previous Board Action	The Board previously reviewed and approved this agreement on April 25, 2019, Agenda item 042519-A4
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document on November 23, 2020 - 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 , 503-742-5956
Contract No.	9901

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with the Gladstone School District for the food pantry program.

The Blueprint for a Healthy Clackamas County is the county's external facing initiative to help coordinate, connect and align priorities for partners to collectively make an impact on improving the health and quality of life for residents within our communities.

Gladstone School District has been selected to receive a grant for their "Food Pantry" project. This Agreement provides funding for the FY 20-21.

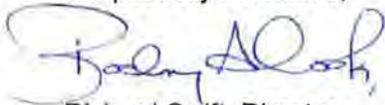
This Agreement is effective July 1, 2020 and continues through June 30, 2021.

Page 2 Staff Report
December 10, 2020
Agreement #9901

RECOMMENDATION:

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

Respectfully submitted,



Robin Allesh, H3S DEPUTY / FOR

Richard Swift, Director
Health, Housing, and Human Services

INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND GLADSTONE SCHOOL DISTRICT

Agreement #9901

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Gladstone School District ("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 Blueprint for a Healthy Clackamas County is the county's external facing initiative to help coordinate, connect and align priorities for partners to collectively make an impact on improving the health and quality of life for residents within our communities.

Over the past year, Clackamas County Public Health has convened community members and organizations to prioritize the goals, objectives and strategies within the Blueprint report.

The Blueprint for a Healthy Clackamas County Community Grants fund community-driven projects that can work to implement the identified goals, objectives and strategies within the plan. There is an emphasis on funding projects that will create coalitions in advancing health equity and trauma-informed approaches within specific communities in Clackamas County.

Gladstone School District has been selected to receive a grant for their project "Gladstone Food Pantry" This Agreement provides funding for the FY 20-21. Continued financial support will be dependent on the project's success and availability of funds.

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 June 1, 2020, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 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 and further identified in the Budget and Compensation attached hereto as Exhibit B and incorporated herein.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed 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.
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. Susan Berns-Norman or their designee will act as liaison for the County.

Contact Information:

SusanB@clackamas.us - 503-742-5948

Lennie Bjornsen or their designee will act as liaison for the Agency.

Contact Information:

bjornsenl@gladstone.k12.or.us - (503) 780-2658

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

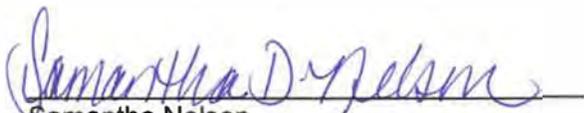
delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

- 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.

GLADSTONE SCHOOL DISTRICT


Samantha Nelson

11/30/2020
Date

17789 Webster Rd.
Street Address

Gladstone, OR 97027
City / State / Zip

503-655-2777 / nelsons@gladstone.k12.or.us
Phone / E-mail

CLACKAMAS COUNTY

- Commissioner: Jim Bernard, Chair
- Commissioner: Sonya Fischer
- Commissioner: Ken Humberston
- Commissioner: Paul Savas
- Commissioner: Martha Schrader

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing, and Human Services

Date

Exhibit A

Scope of Work, Reporting Requirements, and Performance Measures

<p>Scope of Work:</p> <p>Will increase availability of healthy foods along with nutrition education, and awareness of health care systems. Will deepen our customer base of households with infants, children, adolescents, elders, and extended families.</p> <p>Will work to connect food pantry shoppers with wraparound health supports and care-coordination entities and increase the distribution of healthy local foods and nutrition skills for local households. The Gladstone Pantry will become a hub for family stability and a culture of health throughout the McLoughlin corridor</p>		
<p>Reporting Requirements:</p> <ul style="list-style-type: none"> A. Required to report out and share progress at meetings either by written report, verbal report or presentation. B. Receipts and expenditure reports shall be submitted with request for reimbursement. C. A written final report is due July 31, 2020 to include budget. 		
<p>Performance Measures:</p> <p>1) Evaluation: Please describe the anticipated outcomes of this project and how the outcomes (results) will be collected and analyzed.</p>		
Outcome	Data Source	Data Point
<i>Example: Conduct trainings with youth.</i>	<i>Example: Attendance records.</i>	<i>Example: Number of trainings conducted.</i>
Increase numbers of households and individuals provided healthy foods.	Oregon Food Bank database; Link 2 Feed	10% increase per year
Increase distribution of fresh produce.	Weekly OFB delivery inventory & produce hubs	10% increase over year 1 baseline
Increase numbers of Pantry shopping households referred to other human services	Oregon Food Bank database; Link 2 Feed	10% increase over year 1 baseline
Increase number of healthy food preparation demonstrations during Pantry shopping shifts.	Customer survey during Pantry shopping shifts with food prep education demonstrations; participation, increase in knowledge, value added.	Number of food demos per calendar quarter.
Increase number of Pantry shopping households aware of local health care, insurance, and system navigation resources	Semi annual pantry customer survey	10% increase over year 1 baseline

Increase number of shopping households provided information on human services, health care, chronic disease prevention, nutrition, meal planning, and preparation.	Semi annual pantry customer survey	10% increase over year 1 Baseline
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1. Provide Projected Work Plan / Timeline / Milestones				
Note: Only complete what is necessary to accurately detail your project work plan / timeline / milestones.				
*School based projects may negotiate an alternate timeline that coincides with the academic calendar.				
Task / Activity	Start Date	Completion Date	People Involved	Milestone / Result
1) Increase numbers of households and individuals provided healthy foods as measured by OFB Link 2 Feed data base. At least weekly food boxes or shopping per COVID rules. To include variety of healthy dry goods, produce, dairy and proteins available from food suppliers Diversity of food suppliers such as Oregon Food Bank, Red Mill, Dave's Bread, Imperfect produce, community donations, food drives, and home gardeners. Utilize resource donations from community and corporations to purchase supplemental foods to stabilize and enhance supplies of healthy foods. Document food box or shopping customers by age groups and Zip codes	July 2020	June 2021	Coordinator Volunteer Corp Corporate and community donations Oregon Food Bank	Healthy Blue Print Plan objective to increase availability of healthy foods for target populations
2) Increase distribution of fresh produce as measured by weekly produce deliveries [lbs] Oregon Food Bank weekly deliveries OFB shop the dock as available	July 2020	June 2021	Coordinator Volunteer Corp Corporate and community donations.	Healthy Clackamas Blue Print Plan objective to increase availability of healthy foods for target populations

<p>OFB produce markets – referrals Imperfect Produce Inc. donations Home garden and community gleaner seasonal donations</p>			<p>Oregon Food Bank</p>	
<p>3) Improve connections and awareness of Pantry customers with an array of health and human services as measured by number of food boxes containing services information flyers. Information & Referral flyers such as 211.Info, Family Resource Coordinators, BabyLink Service provider flyers such as County Health Centers, Clackamas Parenting Together, Lifeworks. Food insecurity supports such as Produce Hubs, meal sites, food pantries and farmers markets</p>	<p>July 2020</p>	<p>June 2021</p>	<p>Coordinator Volunteer Corp NW Family Services Clackamas County Health Centers 211 Info.org School Counselors District Liaison</p>	<p>Healthy Clackamas Blue Print Plan objective to increase awareness and connections to health care systems, insurance, and providers.</p>
<p>4) Increase household awareness with healthy meals shopping and preparation; as measured by number of food boxes with flyers about healthy foods information, recipes, and USDA diet guidelines. Such as: Less processed foods Sugars & gluten Organics USDA plate graphic Healthy meal recipes</p>	<p>July 2020</p>	<p>June 2021</p>	<p>Coordinator Volunteer Corp Oregon Food Bank OSU Extension Service</p>	<p>Healthy Clackamas Blue Print Plan objective to decrease food insecurity stress in the health equity zones.</p>
<p>5) Improve the trauma informed practices of Gladstone Food Pantry volunteers, environments, relationships, and routines; as measured by: Volunteer training: ACE Essentials</p>	<p>July 2020</p>	<p>June 2021</p>	<p>District Liaison ACE Essentials consultants Volunteer Corp. Coordinator</p>	<p>Clackamas Blue Print Plan objective to increase the number and depth of community organizations practicing trauma informed services</p>

<p>Building resilience Safe Environments Predictable Routines Benevolent relations Coordinator monitoring process and environments for consistency, emotional safety, supportive relations among volunteers and customers. Findings included in quarterly reports. Annual customer survey about Pantry process, conditions, relations, routines. Findings reported in FY end report.</p>				
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Exhibit B

Budget and Compensation

Blueprint Grant Budget FY 2020-21

1. Budget		
Projected expenses (cannot be less than \$10,000 or exceed \$100,000) If asking for multi-year funding, please, break down expenses by County fiscal year of July 1-June 30. Multi-year awards are not guaranteed and contingent upon the availability of funding. (FY July 2018/June 2019, FY July 2019/June 2020, FY July 2020/June 2021)		
Item (Materials, Staffing, Evaluation)	Explanation	Cost
Professional Coordinator	Professional Services contract with NW Family Services for part time professional coordinator for pantry operations	\$20,000 BP grant
Professional Coordinator	Gladstone School District annual grant to complement BP grant for Pantry operations	\$6300 grant
Pantry Overhead	Gladstone School District in-kind; facility, maintenance, utilities, technology, accounting, liaison	\$3700 inkind
Pantry supplies & equipment	Oregon Food Bank annual appropriation to school pantries	\$5000 LOC
Pantry food supply	Oregon Food Bank weekly delivery; dry goods and produce	
Food Donations	Bob's Mill, Dave's Bread, Imperfect Produce, Grocery Outlet family gardens	
Community volunteers	40 to 60 volunteers each month for unloading delivery trucks, boxing food boxes, merchandizing, customer service, cleaning	
Community Donations	Cash donations for pantry food supplies, operations, customer supports, long term sustainability. Current balance is above \$50k	
	TOTAL (cannot exceed \$100,000)	35,000

- A. CLACKAMAS shall compensate AGENCY for satisfactorily completing activities described in Exhibit A.
- B. The total payment from CLACKAMAS shall not exceed \$40,000.

AGENCY shall submit a request for reimbursement for true and verifiable expenses on a monthly basis the month following that in which activities are performed. The request may use any format approved by the CLACKAMAS, shall list the contract #9901, list work accomplished for which reimbursement is requested, and total amount due for the billing period. Requests for reimbursement shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045

or electronically to:

PublicHealthFiscalAP@clackamas.us

Within thirty (30) days after receipt of the bill, provided that the Program Manager, has approved the activities specified on the request for reimbursement, the CLACKAMAS shall pay the amount requested to the AGENCY.

III. REPORTING REQUIREMENTS

- A. Agency is required to report out and share progress at meetings either by written report, verbal report, or presentation.
- B. Agency shall submit receipts and expenditure reports with requests for reimbursement.
- C. Agency shall submit a written final report is due July 31, 2021 to include budget expenditures.

December 10, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Water Environment Services

Purpose/Outcomes	Water Environment Services will provide administrative staff to assist Public Health with Department Operations Center (DOC) tasks needed for the COVID-19 response
Dollar Amount and Fiscal Impact	Contract maximum value \$50,000.
Funding Source	252-3250-00132-431900-0CARES No Additional County General Funds are involved.
Duration	Effective July 01, 2020 and terminates on June 30, 2021
Previous Board Action	No previously Board Action
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document on November 24, 2020 - AN
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 , 503-742-5956
Contract No.	9614

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with Water Environment Services for staff to assist Public Health with the COVID response.

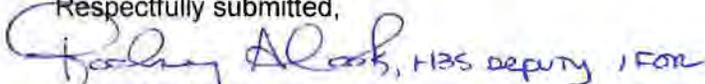
Water Environment Services will provide administrative staff to assist Public Health with Department Operations Center (DOC) tasks needed for the COVID-19 response

This Agreement is effective July 1, 2020 and continues through June 30, 2021.

RECOMMENDATION:

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

Respectfully submitted,

 Ashley Alcock, H3S deputy / for

Richard Swift, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND WATER ENVIRONMENT SERVICES
Agreement #9614**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Water Environment Services ("Agency"), an intergovernmental entity formed under ORS Chapter 190, 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 parties agree that Agency will provide 2 staff to assist with the County's Department Operations Center ("DOC") administrative tasks in support of the COVID-19 response.

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 June 30, 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 **fifty thousand dollars** (\$50,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed 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. County agrees to reimburse Agency for true and verifiable expenses as documented in WorkForce Software. Agency will invoice COUNTY monthly.
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. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited.
- 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 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. Sherry Olson or their designee will act as liaison for the County.

Contact Information: SOlson4@clackamas.us - Phone number: 503-742-5342

Lauren Haney or their designee will act as liaison for the Agency.

Contact Information: LHaney@clackamas.us - Phone number: 503-742-4591

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.** Both Parties 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. Both Parties 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, Both Parties shall permit the authorized representatives of the other Party’ 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 County. The County 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 County Project Manager.
- F. Hazard Communication.** Not Applicable.
- 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.

Water Environment Services

By: _____
Board Chair or Delegate Authority

 Date

CLACKAMAS COUNTY

- Commissioner: Jim Bernard, Chair
- Commissioner: Sonya Fischer
- Commissioner: Ken Humberston
- Commissioner: Paul Savas
- Commissioner: Martha Schrader

Signing on Behalf of the Board:

 Richard Swift, Director
 Health, Housing, and Human Services Department

 Date

Exhibit A

SCOPE OF WORK AND COMPENSATION

I. Scope of Work

A. Agency agrees to:

1. Provide 2 staff, 2 days a week, 8:30a.m. – 6:00p.m. each to perform tasks including but not limited to the following list:
 - ICS 214 Activity logs for 60+ people daily
 - ICS 214 Activity log daily emails to COVID email group
 - DOC Roster reconciliation daily and updating as new staff added/removed
 - Maintaining and updating email group
 - Maintaining and updating weekly, COVID group phone list

B. County agrees to:

1. Supervise staff while performing the tasks specified above. Supervision of day-to-day work for Agency remains the responsibility of Agency.
2. Provide work space and necessary resources for staff to complete the work above.
3. Provide necessary training for staff on required tasks.

December 10, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment #12 to Intergovernmental Agreement #159159 with the State of Oregon, Acting by and through its Oregon Health Authority, for the operation and financing of Community Mental Health, Addiction Treatment, Recovery & Prevention Services, and Problem Gambling Programs

Purpose/Outcomes	This Agreement provides funding for the local administration and operation of behavioral health and addiction program services to residents of Clackamas County.
Dollar Amount and Fiscal Impact	Amendment adds \$34,057.96 to the value of the Agreement. New agreement maximum value is \$13,639,265.12.
Funding Source	No County General Funds are involved. Funding provided by State of Oregon, Oregon Health Authority.
Duration	Effective upon signature and terminates on December 31, 2020.
Previous Board Action	Board reviewed and approved Agreement #159159 on June 20, 2019, Agenda Item 062019-A10.
Counsel Review	Reviewed and approved November 19, 2020 (KR).
Procurement Review	Was this item processed through Procurement? No. This is a revenue agreement.
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.	9334

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #12 to Intergovernmental Agreement #159159 with the State of Oregon, acting by and through its Oregon Health Authority for the financing and operation of Community Mental Health, Addiction Treatment, Recovery & Prevention Services and Problem Gambling Programs in Clackamas County. The Board of County Commissioners is the Local Mental Health Authority for Clackamas County that operates a Community Mental Health Program funding by this Agreement. The Behavioral Health Division ensures that the funds are administered according to the terms set forth by this Agreement to provide local administration, behavioral health and addiction services to Clackamas County.

This Amendment, providing \$34,057.96 for Intoxicated Driver Program Fund Services (A&D 65 Services), is effective upon signature and terminates December 31, 2020. The new maximum value of the Agreement is \$13,639,265.12.

RECOMMENDATION:

Staff recommends approval of this Amendment and authorization for Richard Swift to sign on behalf of the County.

Respectfully submitted,

Rodney A. Cook Rodney A. Cook , H3S Deputy /for
Richard Swift, Director
Health, Housing & Human Services Department

Contract Transmittal Form

Health, Housing & Human Services Department

H3S Contract #: 9334	Division: BH	<input type="checkbox"/> Subrecipient
Board Order #:	Contact: Russell, Angela	<input checked="" type="checkbox"/> Revenue
	Program Contact: Brink, Angela	<input checked="" type="checkbox"/> Amend # 12 \$ \$34,057.96
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item BCC Agenda **Date:** _____

CONTRACT WITH: State of Oregon, OHA

CONTRACT AMOUNT: \$13,639,265.12

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 type="checkbox"/> Upon Signature _____ - _____	<input type="checkbox"/> Biennium _____ - _____
<input type="checkbox"/> Other _____ - _____	<input checked="" type="checkbox"/> Retroactive Request? 7/1/2020 - 12/31/2020

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: Thursday, November 19, 2020
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

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

ORIGINATING COUNTY

**DEPARTMENT: Health, Housing Human Services
Behavioral Health**

PURCHASING FOR: Contracted Services _____

OTHER PARTY TO

CONTRACT/AGREEMENT: State of Oregon, OHA _____

BOARD AGENDA ITEM

NUMBER/DATE: _____

DATE: _____

PURPOSE OF

CONTRACT/AGREEMENT: 2019-21 Intergovernmental Agreement #159159 with the State of Oregon, by and through the Oregon Health Authority for the financing of Community Mental Health, Addiction Treatment, Recovery & Prevention, and Problem Gambling Services

Amendment #12 adds \$34,057.96 to A&D 65 (IDPF).

H3S CONTRACT NUMBER: 9334 _____



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.

**TWELFTH AMENDMENT TO
OREGON HEALTH AUTHORITY
2019-2021 INTERGOVERNMENTAL AGREEMENT FOR THE FINANCING OF
MENTAL HEALTH, ADDICTION TREATMENT, RECOVERY, & PREVENTION,
AND PROBLEM GAMBLING SERVICES AGREEMENT #159159**

This Twelfth Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Community Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services effective as of July 1, 2019 (as amended, the “Agreement”), is entered into, as of the date of the last signature hereto, by and between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and **Clackamas County** (“County”).

RECITALS

WHEREAS, OHA and County wish to modify the Financial Assistance Award set forth in Exhibit C 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. The financial and service information in the Financial Assistance Award are hereby amended as described in Attachment 1 attached hereto and incorporated herein by this reference. Attachment 1 must be read in conjunction with the portion of Exhibit C of the Agreement that describes the effect of an amendment of the financial and service information.
2. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
3. County represents and warrants to OHA that the representations and warranties of County 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. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
5. 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.

6. Signatures.

Clackamas County

By:

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

State of Oregon acting by and through its Oregon Health Authority

By:

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

Approved by: Director, OHA Health Systems Division

By:

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

Approved for Legal Sufficiency:

Approved by Steven Marlowe, Senior Assistant Attorney General, Department of Justice, Tax and Finance Section, on April 30, 2019; e-mail in contract file.

OHA Program:

Approved by Theresa Naegeli on October 10, 2020; e-mail in contract file.

ATTACHMENT 1

**EXHIBIT C
Financial Pages**

MODIFICATION INPUT REVIEW REPORT

MOD#: A0105

CONTRACT#: 159159

CONTRACTOR: CLACKAMAS COUNTY

INPUT CHECKED BY: _____ DATE CHECKED: _____

SE#	FUND CODE	CPMS PROVIDER	PROJ	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
-----	-----------	---------------	------	-----------------	------------------	------	-------------------	--------------------------	---------	---------	------	-------------	-----

FISCAL YEAR: 2020-2021

65	424	-0-		7/1/2020 - 12/31/2020	0 /NA	\$0.00	\$34,057.96	\$0.00	C	1	Y		1
TOTAL FOR SE# 65							\$34,057.96	\$0.00					
TOTAL FOR 2020-2021							\$34,057.96	\$0.00					
TOTAL FOR A0105 159159							\$34,057.96	\$0.00					

OREGON HEALTH AUTHORITY
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: CLACKAMAS COUNTY
DATE: 11/04/2020

Contract#: 159159
REF#: 013

REASON FOR FAAA (for information only):

Increase funding for SE 65 IDPF Services.

The following special condition(s) apply to funds as indicated by the special condition number in column 9. Each special condition set forth below may be qualified by a full description in the Financial Assistance Award.

A0105 1 These funds are for A&D 65 IDPF Services for quarterly invoices from 7/1/2019-12/31/2020.

December 10, 2020

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Multnomah County for
Psychiatric Consultation Services

Purpose/Outcomes	To provide psychiatric consultation and expert opinion to Clackamas County Behavioral Health.
Dollar Amount and Fiscal Impact	The contract maximum is \$9,800.00.
Funding Source	No County General Funds are involved. Oregon Health Plan (OHP) funds.
Duration	Effective upon signature and terminates on June 30, 2021.
Previous Board Action	No previous action
Counsel Review	Reviewed by Counsel April 30, 2020 (KR)
Procurement Review	Was this item reviewed by Procurement? No Not required for intergovernmental 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.	#9675

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement (IGA) with Multnomah County for psychiatric consultation and expert opinion on cases involving Health Share/CareOregon members and non-Medicaid members involved with County's Intensive Care Coordination, Wraparound, and Choice Model teams and provide guidance to Mental Health Abuse Investigators.

This IGA, effective upon signature through June 30, 2021, has a maximum value of \$9,800.00. County Counsel reviewed this Agreement April 30, 2020.

RECOMMENDATION:

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

Respectfully submitted,

 Gary Alcock, HHS Deputy / FOR

Richard Swift, Director
Health, Housing and Human Services

INTERGOVERNMENTAL AGREEMENT

BETWEEN

CLACKAMAS COUNTY,
HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT,
BEHAVIORAL HEALTH DIVISION

AND

MULTNOMAH COUNTY,
HEALTH DEPARTMENT, MENTAL HEALTH AND ADDICTIONS DIVISION

Agreement #9675

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("Clackamas") and Multnomah County ("Multnomah"), both political subdivisions of the State of Oregon, 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.

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 **June 30, 2021**, whichever is sooner.
2. **Scope of Work.** Multnomah agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** Clackamas agrees to pay Multnomah, from available and authorized funds, a sum not to exceed **nine thousand eight hundred dollars (\$9,800.00)** for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, Multnomah shall submit monthly invoices for Work performed and shall include the total amount billed to date by Multnomah 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 Multnomah following Clackamas' review and approval of invoices submitted by Multnomah. Multnomah shall not submit invoices for, and Clackamas will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Multnomah Representations and Warranties:* Multnomah represents and warrants to Clackamas that Multnomah 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 Multnomah enforceable in accordance with its terms.
 - B. *Clackamas Representations and Warranties:* Clackamas represents and warrants to Multnomah that Clackamas 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 Clackamas 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 Clackamas or Multnomah may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the Clackamas or Multnomah 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. Clackamas or Multnomah 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. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, 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 to either the Work under this Agreement is prohibited or the party 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. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

- 8. **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 two (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 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. Meghan Tamargo, Compliance & Quality Management Supervisor, or their designee will act as liaison for the County.

Contact Information:

Phone: 503-742-5981

Email: MTamagro@clackamas.us

Tracy Garell, Senior Manager, Direct Clinical Services, or their designee will act as liaison for the Agency.

Contact Information:

Phone: 503-988-8768

Email: tracy.garell@multco.us

9. 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. Any claim between Clackamas and Multnomah 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 Clackamas or Multnomah 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. Clackamas and Multnomah, by execution of this Agreement, hereby consent 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.
- 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.** The parties shall retain, maintain, and keep accessible all records relevant to this Agreement (“Records”) for a minimum of ten (10) 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. The parties 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, the parties shall permit authorized representatives access to the Records at reasonable times and places for purposes of examining and copying.
- E. **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.
- F. **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.
- G. **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.

- H. **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.
- I. **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.
- J. **No Third-Party Beneficiary.** Multnomah and Clackamas 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.
- K. **Subcontract and Assignment.** Multnomah 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 Clackamas, which shall be granted or denied in Clackamas' sole and absolute discretion. Clackamas' consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- L. **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.
- M. **Survival.** All provisions in sections 6, 8, and 9 shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **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.
- O. **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.
- P. **Force Majeure.** Neither Multnomah nor Clackamas shall be held responsible for delay or default caused by events outside of Multnomah or Clackamas' reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war.
- Q. **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.

This Agreement consists of ten (10) sections plus the following exhibits that by this reference are incorporated herein:

- Exhibit A – Scope of Work
- Exhibit B – Compensation
- Exhibit C – Business Associate Agreement

[Signatures on Following Page]

EXHIBIT A
SCOPE OF WORK

Multnomah shall provide psychiatric consultation and expert opinion on cases involving Non-Medicaid members involved with Clackamas' Intensive Care Coordination, Wraparound and Choice Model teams and provide guidance to Mental Health Abuse Investigators.

Multnomah's Consulting Psychiatrist shall perform the following work:

1. Provide adult, child, and adolescent psychiatric consultation services within the scope of their license for appropriate referrals. The Consulting Psychiatrist shall provide direction, consultation, and psychiatric review via telephone, teleconferencing, email, fax, face-to-face, in group and/or individual settings, to Clackamas' Intensive Care Coordination, Wraparound and Choice Model teams.
2. Participate in clinical meetings or conference calls as needed with Clackamas' Intensive Care Coordination, Wraparound and Choice Model teams to discuss cases, and answer general questions, including questions related to medications.
3. Provide guidance to Clackamas' Mental Health Abuse Investigators to determine if medications and/or treatment options substantiate abuse.
4. Maintain working relationships with Clackamas' Intensive Care Coordination, Wraparound and Choice Model teams, as well as managers and supervisors of direct clinical services and safety net programs, and quality management supervisor.
5. Comply with the obligations set forth in the Business Associate Agreement, **Exhibit C** of this Agreement, and under HIPAA.

**EXHIBIT B
COMPENSATION**

- a. Payment for all Work performed under this Agreement shall not exceed the total maximum sum of **\$9,800.00**.

Multnomah shall be compensated at the rate of **\$195.00 per hour** in quarter hour increments for services rendered.

- b. Multnomah shall submit **itemized monthly invoices by the 10th day of the month** following the month Services were provided. The invoice shall include:

Contract #9675,
Service details,
Date(s) of service,
Total amount due for all Services provided during the month, and
Total amount billed to date by Multnomah prior to the current invoice.

If Multnomah fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Multnomah waives any rights to present such invoice thereafter and to receive payment therefor.

All invoices and supporting documentation shall be sent by email or mail to:

BHAP@clackamas.us and MTamargo@clackamas.us

Clackamas County Behavioral Health Division
Accounts Payable
2051 Kaen Road, Suite #154
Oregon City, Oregon 97045

When submitting electronically, designate Multnomah County and Agreement #9675 in the subject of the email.

- c. Payments shall be made to Multnomah, within thirty (30) days, following Clackamas' review and approval of invoices submitted by Multnomah. Multnomah shall not submit invoices for, and Clackamas will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before Multnomah performs Work subject to the amendment.

EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is entered into upon signature (“Effective Date”) by and between **Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing and Human Services, Behavioral Health Division** (“Covered Entity”) and **Multnomah County** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

Whereas, the Parties agree to establish safeguards for the protection of such information;

Whereas, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

Now, Therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
- 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
- 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
- 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as

specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,

- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
- a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. In plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
 - c. By a method of notification that meets the requirements of 45 CFR §164.404(d).

- d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

December 10, 2020

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with
Clackamas County District Attorney's Office for a Legal Assistant
to support mutual clients in the adult drug court program

Purpose/Outcomes	The District Attorney's Office would partner with Health Centers to provide a legal assistant to support mutual clients in their legal cases for adult drug court cases.
Dollar Amount and Fiscal Impact	Contract maximum value \$106,084.
Funding Source	Criminal Justice Commission Specialty Courts Grant Program – Clackamas County Adult Drug Court
Duration	Effective July 01, 2020 and terminates on June 30, 2021
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	County Counsel has reviewed and approved this document on December, 1 2020 - 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	Deborah Cockrell , 503-742-5495
Contract No.	9608

BACKGROUND:

Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with Clackamas County District Attorney's Office for a dedicated legal assistant to work with the adult drug court program.

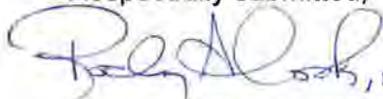
The legal assistant will be working with Health Centers by supporting the participants in the adult drug court program, who are our mutual clients. This position will be a dedicated staff in the District Attorney's Office to help manage legal case needs for adult drug court participants and support activities for the District Attorney's Office, including providing legal assistance and administrative support to ensure efficient workflows and ongoing management of cases being diverted into this specialty court track

Page 2 Staff Report
December 10, 2020
Agreement #9901

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, H3S Deputy / For

Richard Swift, Director
Health, Housing, and Human Services

#9608

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COUNTY DISTRICT ATTORNEY'S OFFICE**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas County District Attorney's Office ("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.

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 June 30, 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 one hundred and six thousand and eighty-four dollars (\$106,084) for accomplishing the Work required by this Agreement.
4. **Payment.** The Agency can submit an invoice for the total contract amount upon contract execution. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. Agency shall email invoice(s) to the email address of: healthcenterap@clackamas.us.
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 Agency may terminate this Agreement in the event the Agency fails to receive expenditure authority sufficient to allow the Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of 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. Agency 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 Agency, its subcontractors, agents, or employees. The Agency agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Agency or the Agency's employees, subcontractors, or agents.

However, neither Agency nor any attorney engaged by Agency 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 Agency 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. **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.

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. Program Supervisor – Treatment Court Programs or their designee will act as liaison for the County.

Contact Information:

Jennifer Rees, LPC, CADC III
Clackamas County – Health Centers Division
Email: jrees@clackamas.us
Phone: 503-722-6502

Legal Office Supervisor – District Attorney’s Office or their designee will act as liaison for the Agency.

Contact Information:

Melissa Dent
Clackamas County – District Attorney’s Office
Email: mdent@clackamas.us
Phone: 503-722-2731

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 County. 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.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to

the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 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.

(Signature page below, the rest of this page is intentionally left blank.)

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

**Clackamas County, Health, Housing
and Human Services.**

**Clackamas County, District Attorney’s
Office**

Brandi Pelham

Chair, Board of County Commissioners

Brandi Pelham, Administrator

Date

11/16/20

Date

{ *The rest of this page is intentionally left blank.* }

Exhibit A

SCOPE OF WORK

Under general supervision, to independently perform a full range of legal case management and support activities for criminal prosecution and other functions of the District Attorney’s Office; and to do other work as required.

The DA’s office is an essential partner in a treatment court program. These types of programs require collaboration across systems and disciplines in order to successfully operate. Clackamas Health Centers is the dedicated treatment provider for the adult drug court program, and our grant awarded from the Criminal Justice Commission is meant to encourage and support continued collaboration across systems. The lack of a dedicated legal assistant for the drug court program has been identified as a gap in our current program operations, this contract is meant to help address this gap.

The legal assistant will be helping Health Centers by supporting the participants in the adult drug court program, who are our mutual clients. This position will be a dedicated staff in the District Attorney’s Office to help manage legal case needs for adult drug court participants and support activities for the District Attorney’s Office, including providing legal assistance and administrative support to ensure efficient workflows and ongoing management of cases being diverted into this specialty court track. The legal assistant is a necessary role in the administration of a specialty court program. Having a dedicated staff will ensure the availability of the District Attorney’s Office to continue to support the operations of the adult drug court program and Health Centers’ clients.



DAN JOHNSON
DIRECTOR

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

December 10, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the South End Road at Milepost 3.8 Project and Authorizing Good Faith Negotiations and Condemnation Actions

Purpose/Outcomes	Under ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project
Dollar Amount and Fiscal Impact	The right of way budget for the project is estimated to be \$88,891.92 (\$79,762.72 from Federal Emergency Relief Program (ERP) and \$9,129.20 from County Road Funds). The total amount estimated for this project is \$2,740,000.
Funding Source	\$2,458,602 in Federal ERP and \$281,398 in County Road Funds will be utilized for this project.
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action	11/25/20: BCC Approval of an Intergovernmental Agreement with the Oregon Department of Transportation for Right of Way Services for the South End Road at Milepost 3.8 Project 01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects 08/16/18: BCC Approval of Supplemental Project Agreement No. 32607 for 2017 Emergency Relief Program Project Funding 05/16/19: Approval of a Contract with David Evans and Associates, Inc. for the South End Road at Milepost 3.8
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of "Travelers on Clackamas County roads will experience roads in good condition." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" by constructing retaining walls to mitigate slope instability.
Counsel Review	Reviewed Date: Approved 11/24/20 SC
Procurement Review:	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

	2. If no, provide brief explanation: This item is a resolution of necessity, required under ORS 35 as a precursor in support of possible condemnation action.
Contact Person	Sharan LaDuca, Sr. Right of Way Agent 503-742-4675

Background:

Clackamas County obtained Federal Emergency Relief Program (ERP) funds to stabilize the roadway and slope on South End Road at Milepost 3.8. The road was damaged in March of 2017 as a result of heavy rains that occurred during the spring of 2017. It is anticipated that the permanent solution will consist of construction of two retaining walls approximately 800 feet in total length.

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact four residential properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in that statute, a Resolution of Necessity is required before offers are made for needed rights of way and easements.

The project design team has collected and analyzed data sufficient to choose an alternative and advance the design of the project. The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The design has progressed through the Department of Transportation and Development (the "Department") project development procedures and the final legal descriptions required for acquisition of the needed rights of way and easements from four properties affected by the Project have been developed.

The Department shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

This resolution directs Department staff to proceed with good faith negotiations for the acquisition of the needed property rights and to utilize the expertise of authorized real estate appraisers and other such experts to assist in the acquisition process. The resolution further requires the Director of the Department to notify the Board if the exercise of the power of eminent domain becomes necessary in order to acquire the needed property rights. Only after this process is completed does it authorize the Office of County Counsel to file a Condemnation Action.

Recommendation:

Staff respectfully recommends that the Board of County Commissioners approve the Resolution of Necessity and Purpose authorizing the acquisition of necessary rights of way, easements, and fee property by good faith negotiation if possible, or condemnation, if necessary.

Sincerely,

Sharan LaDuca

Sharan LaDuca,
Senior Right of Way Agent

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the South End Road at Milepost 3.8 Project



Resolution No. _____
Page 1 of 2

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on December 10, 2020 and,

It appearing to the Board that the South End Road at Milepost 3.8 Project (the "Project") will construct two retaining walls to stabilize the existing roadway; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned in accordance with appropriate standards for the improvement of transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

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

It further appearing to the Board that rights of way, and easements within the boundaries described in the attached Exhibit "A-3", "B-3", "A-4", "B-4", "A-6", "B-6", "A-7", and "B-7" (the "Exhibits") are a necessary part of the Project, consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and,

It further appearing that the Board has authority under ORS Chapter 203 and ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings; and

It further appearing that the Board has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County Department of Transportation and Development (the "Department"), in connection with this Project, begin the acquisition process, in accordance with all applicable laws, rules, and regulations governing such process, for the necessary rights of way, easements, and fee property, either through good faith negotiation, agreement, and purchase, or, if necessary, by commencement of condemnation proceedings.

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

In the Matter of Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the South End Road at Milepost 3.8 Project



Resolution No. _____
Page 2 of 2

IT IS FURTHER RESOLVED THAT:

1) The Department be authorized to, in good faith, attempt to negotiate agreements of just compensation with owners of affected property identified in the Exhibits. In so doing, the Department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to assist staff with the acquisition process; and,

2). If the Director of the Department (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the rights of way, easements, and fee property required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending the Exhibits; and,

3). It is the intention of the Board that the required rights of way, easements, and fee property be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director of the Department shall inform the Board when the Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints of condemnation with the circuit court of the County and take such other steps as it determines necessary for the immediate possession of required rights of way, easements, and fee property and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts, and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2020.

Jim Bernard, Chair

Recording Secretary

Parcel 1 – Temporary Construction Easement

A parcel of land lying in the NW1/4NW1/4 of Section 6, Township 3 South, Range 2 East W.M., Clackamas County, Oregon; said parcel being a portion of that property described in that Personal Representative’s Deed to John S. Smets and Marijane J. Smets, recorded December 7, 1990 as Document Number 90-60543 of the Clackamas County Records; said parcel being that portion of said property included in a strip of land variable in width, lying on the Northerly side of the center line of the relocated South End Road, which center line is described as follows:

Beginning at Engineer’s Center line Station 6+10.30, said station being 1497.03 feet North and 53.26 feet West of the Re-Entrant corner of the Absalom F. Hedges Donation Land Claim No. 40, in the Southeast quarter of Section 1, Township 3 South, Range 1 East, W.M.; thence North 00°47’47” West, a distance of 389.70 feet; thence on a 190.99 foot radius curve right (the long chord of which bears North 28°18’21” East, a distance of 185.78 feet) 194.01 feet; thence North 57°24’29” East 113.85 feet; thence on a 1909.72 foot radius curve right (the long chord of which bears North 61°59’28” East, a distance of 305.19 feet) 305.52 feet; thence North 66°34’26” East 315.61 feet; thence on a 1145.92 foot radius curve left (the long chord of which bears North 61°44’26” East, a distance of 193.10 feet) 193.33 feet; thence North 56°54’26” East 155.18 feet; thence on a 1112.00 foot radius curve right (the long chord of which bears North 64°11’13” East, a distance of 281.81 feet) 282.57 feet; thence North 71°28’00” East 39.63 feet; thence on a 216.36 foot radius curve left (the long chord of which bears North 45°08’57” East, a distance of 191.84 feet) 198.76 feet; thence North 18°49’54” East 20.78 feet; thence on a 770.00 foot radius curve left (the long chord of which bears North 14°33’42” East, a distance of 114.66 feet) 114.77 feet; thence North 10°17’30” East 292.85 feet; thence on a 370.00 foot radius curve left (the long chord of which bears North 02°33’32” East, a distance of 99.57 feet) 99.87 feet to a point of compound curvature; thence on a 225.00 foot radius curve left (the long chord of which bears North 12°51’52” West, a distance of 60.22 feet) 60.40 feet to Engineer’s Center line Station 33+87.15.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Northerly Side of Center Line
24+43.80		25+60.08	45.50 feet
25+60.08		26+99.74	43.40 feet

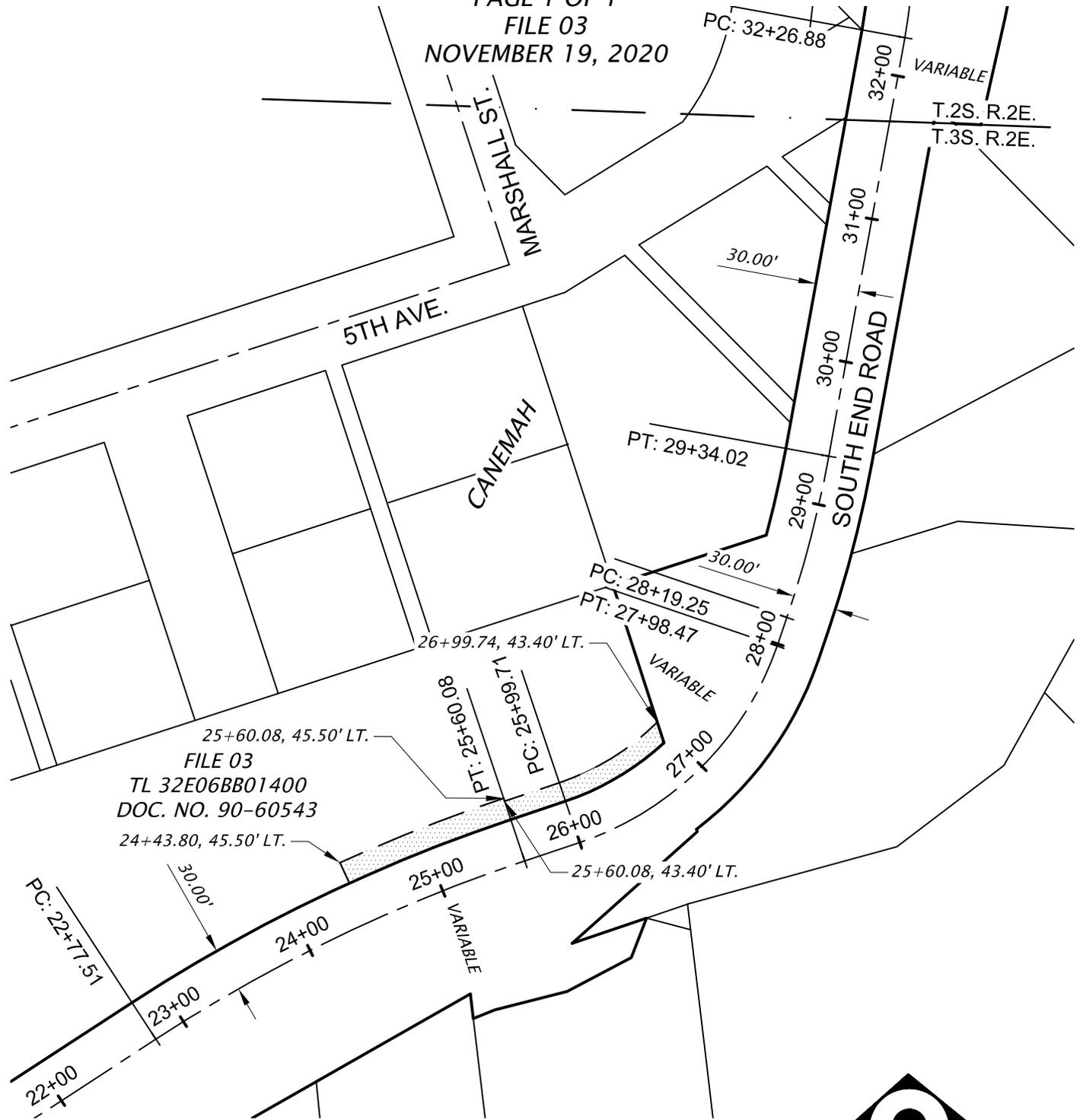
A-3
Page 2 of 2
File 03
November 19, 2020

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00.

This parcel of land contains 3,462 square feet, more or less, outside the existing right of way.

\\DEA\INC.COM\FILES\PROJECT\C\CLKX00000044\0400CAD\EXHIBITS\SV\SV-EM-01-CLKX0044.DWG Tuesday, November 10, 2020 11:09:17 AM

EXHIBIT "B-3"
PAGE 1 OF 1
FILE 03
NOVEMBER 19, 2020

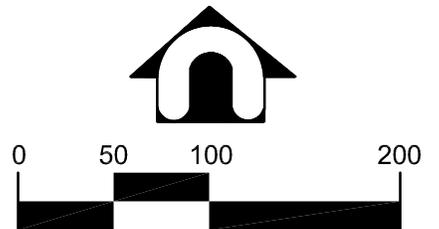


FILE 03
TL 32E06BB01400
DOC. NO. 90-60543

LEGEND:



PARCEL 1: TEMPORARY CONSTRUCTION EASEMENT
3,462 SQ. FT. ± (0.079 AC. ±)



SOUTH END ROAD AT MP 3.8, PROJECT NO. 22270



**DAVID EVANS
AND ASSOCIATES INC.**

2100 S River Parkway, Suite 100
Portland Oregon 97201
Phone: 503.223.6663

Parcel 1 - Temporary Construction Easement

A parcel of land lying in the NW1/4NW1/4 of Section 6, Township 3 South, Range 2 East W.M., Clackamas County, Oregon; said parcel being a portion of that property described in that Statutory Warranty Deed to Crystal P. Field, recorded July 16, 2018 as Document Number 2018-043937 of the Clackamas County Records; said parcel being that portion of said property included in a strip of land 41.00 feet in width, lying on the Westerly side of the center line of the relocated South End Road, which center line is described as follows:

Beginning at Engineer's Center line Station 6+10.30, said station being 1497.03 feet North and 53.26 feet West of the Re-Entrant corner of the Absalom F. Hedges Donation Land Claim No. 40, in the Southeast quarter of Section 1, Township 3 South, Range 1 East, W.M.; thence North 00°47'47" West, a distance of 389.70 feet; thence on a 190.99 foot radius curve right (the long chord of which bears North 28°18'21" East, a distance of 185.78 feet) 194.01 feet; thence North 57°24'29" East 113.85 feet; thence on a 1909.72 foot radius curve right (the long chord of which bears North 61°59'28" East, a distance of 305.19 feet) 305.52 feet; thence North 66°34'26" East 315.61 feet; thence on a 1145.92 foot radius curve left (the long chord of which bears North 61°44'26" East, a distance of 193.10 feet) 193.33 feet; thence North 56°54'26" East 155.18 feet; thence on a 1112.00 foot radius curve right (the long chord of which bears North 64°11'13" East, a distance of 281.81 feet) 282.57 feet; thence North 71°28'00" East 39.63 feet; thence on a 216.36 foot radius curve left (the long chord of which bears North 45°08'57" East, a distance of 191.84 feet) 198.76 feet; thence North 18°49'54" East 20.78 feet; thence on a 770.00 foot radius curve left (the long chord of which bears North 14°33'42" East, a distance of 114.66 feet) 114.77 feet; thence North 10°17'30" East 292.85 feet; thence on a 370.00 foot radius curve left (the long chord of which bears North 02°33'32" East, a distance of 99.57 feet) 99.87 feet to a point of compound curvature; thence on a 225.00 foot radius curve left (the long chord of which bears North 12°51'52" West, a distance of 60.22 feet) 60.40 feet to Engineer's Center line Station 33+87.15.

The width in feet of said strip of land is as follows:

Station	to	Station	Width on Westerly Side of Center Line
28+62.74		29+45.62	41.00 feet

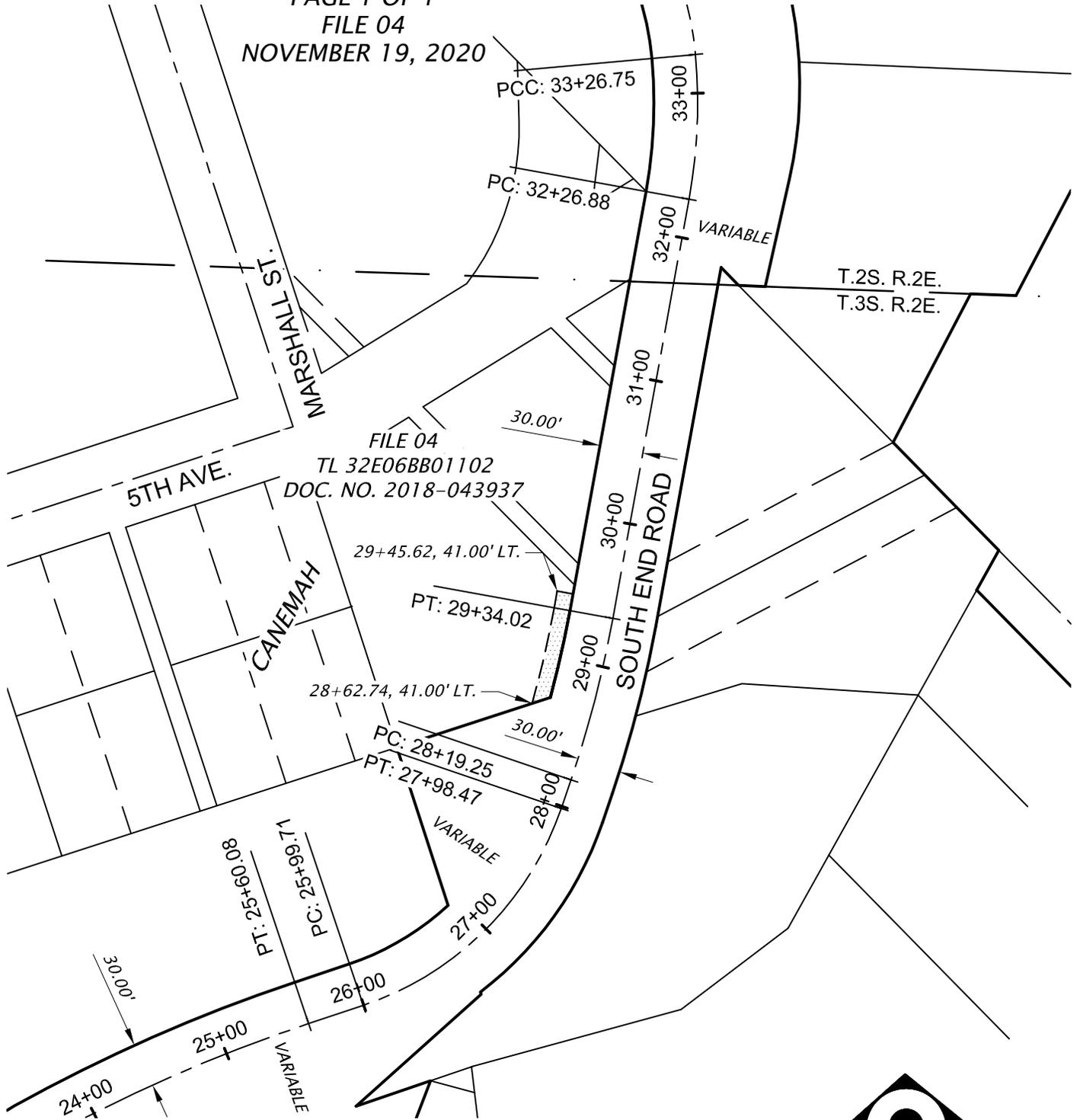
A-4
Page 2 of 2
File 04
November 19, 2020

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00.

This parcel of land contains 835 square feet, more or less, outside the existing right of way.

EXHIBIT "B-4"
 PAGE 1 OF 1
 FILE 04
 NOVEMBER 19, 2020

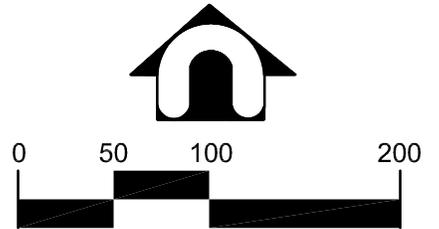
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T.2S. R.2E.
 T.3S. R.2E.

LEGEND:

 PARCEL 1: TEMPORARY CONSTRUCTION EASEMENT
 835 SQ. FT. ± (0.019 AC. ±)



SOUTH END ROAD AT MP 3.8, PROJECT NO. 22270



DAVID EVANS AND ASSOCIATES INC.
 2100 S River Parkway, Suite 100
 Portland Oregon 97201
 Phone: 503.223.6663

Parcel 1 – Subterranean Easement

A parcel of land lying in Parcel 2 of Partition Plat No. 1994-009, Clackamas County, Oregon, and being a portion of that property described in that Statutory Warranty Deed to Curtis Michael Spain and Marlene E. Spain, recorded July 15, 1994 as Document Number 94-057448 of Clackamas County Records; said parcel being that portion of said property included in a strip of land variable in width, lying on the Easterly side of the center line of the relocated South End Road, said parcel being that portion of said property lying Westerly of the following described line:

Beginning at a point opposite and 48.72 feet Easterly of Engineer's Station 28+70.00 on the center line of the relocated South End Road; thence on a 908.81 foot radius curve left, the radius point bears North 74°57'19" West, (the long chord of which bears North 12°47'51" East, a distance of 71.27 feet) 71.29 feet to a point opposite and 49.01 feet Easterly of Engineer's Station 29+37.25 on said center line; thence Northerly in a straight line to a point opposite and 49.16 feet Easterly of Engineer's Station 29+70.00 on said center line.

The center line of the relocated South End Road, is described as follows:

Beginning at Engineer's Center line Station 6+10.30, said station being 1497.03 feet North and 53.26 feet West of the Re-Entrant corner of the Absalom F. Hedges Donation Land Claim No. 40, in the Southeast quarter of Section 1, Township 3 South, Range 1 East, W.M.; thence North 00°47'47" West, a distance of 389.70 feet; thence on a 190.99 foot radius curve right (the long chord of which bears North 28°18'21" East, a distance of 185.78 feet) 194.01 feet; thence North 57°24'29" East 113.85 feet; thence on a 1909.72 foot radius curve right (the long chord of which bears North 61°59'28" East, a distance of 305.19 feet) 305.52 feet; thence North 66°34'26" East 315.61 feet; thence on a 1145.92 foot radius curve left (the long chord of which bears North 61°44'26" East, a distance of 193.10 feet) 193.33 feet; thence North 56°54'26" East 155.18 feet; thence on a 1112.00 foot radius curve right (the long chord of which bears North 64°11'13" East, a distance of 281.81 feet) 282.57 feet; thence North 71°28'00" East 39.63 feet; thence on a 216.36 foot radius curve left (the long chord of which bears North 45°08'57" East, a distance of 191.84 feet) 198.76 feet; thence North 18°49'54" East 20.78 feet; thence on a 770.00 foot radius curve left (the long chord of which bears North 14°33'42" East, a distance of 114.66 feet) 114.77 feet; thence North 10°17'30" East 292.85 feet; thence on a 370.00 foot radius curve left (the long chord of which bears North 02°33'32" East, a distance of 99.57 feet) 99.87 feet to a point of compound curvature; thence on a 225.00 foot radius curve left (the

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Page 2 of 2
File 06
November 19, 2020

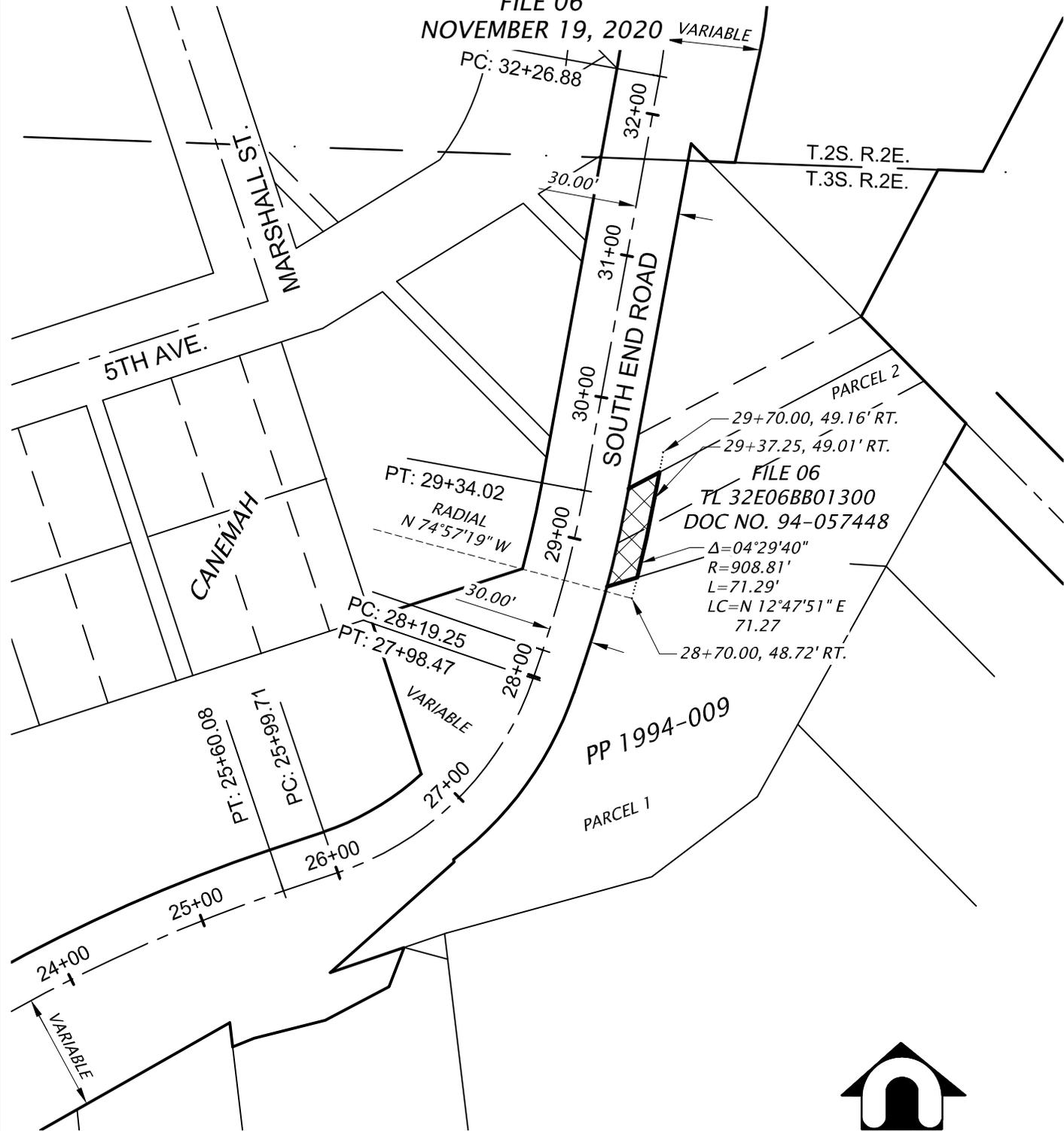
long chord of which bears North 12°51'52" West, a distance of 60.22 feet) 60.40 feet to Engineer's Center line Station 33+87.15.

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00.

This parcel of land contains 1,365 square feet, more or less, outside the existing right of way.

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EXHIBIT "B-6"
PAGE 1 OF 1
FILE 06
NOVEMBER 19, 2020



T.2S. R.2E.
T.3S. R.2E.

PARCEL 2

FILE 06
TL 32E06BB01300
DOC NO. 94-057448

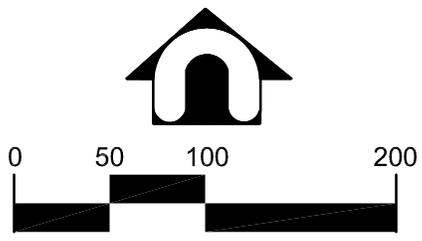
PP 1994-009

PARCEL 1

LEGEND:



PARCEL 1: SUBTERRANEAN EASEMENT
1,365 SQ. FT. ± (0.031 AC. ±)



SOUTH END ROAD AT MP 3.8, PROJECT NO. 22270



DAVID EVANS
AND ASSOCIATES INC.
2100 S River Parkway, Suite 100
Portland Oregon 97201
Phone: 503.223.6663

Parcel 1 – Subterranean Easement

A parcel of land lying in Parcel 1 of Partition Plat No. 1994-009, Clackamas County, Oregon, and being a portion of that property described in that Statutory Warranty Deed to Curtis Michael Spain and Marlene E. Spain, recorded July 15, 1994 as Document Number 94-057448 of Clackamas County Records; said parcel being that portion of said property lying Northwesterly of the following described line:

Beginning at a point opposite and 47.58 feet Southerly of Engineer's Station 26+09.91 on the center line of the relocated South End Road; thence on a 293.00 foot radius curve left, the radius point bears North 22°56'59" West, (the long chord of which bears North 52°45'12" East, a distance of 144.71 feet) 146.22 feet to a point opposite and 47.33 feet Southerly of Engineer's Station 27+30.13 on said center line; thence on a 250.00 foot radius compound curve left, (the long chord of which bears North 29°11'36" East, a distance of 80.48 feet) 80.84 feet to a point opposite and 48.78 feet Southeasterly of Engineer's Station 27+96.23 on said center line; thence on a 908.81 foot radius compound curve left, (the long chord of which bears North 16°28'55" East, a distance of 109.32 feet) 109.39 feet to a point opposite and 48.78 feet Southeasterly of Engineer's Station 29+00.00 on said center line.

The center line of the relocated South End Road, is described as follows:

Beginning at Engineer's Center line Station 6+10.30, said station being 1497.03 feet North and 53.26 feet West of the Re-Entrant corner of the Absalom F. Hedges Donation Land Claim No. 40, in the Southeast quarter of Section 1, Township 3 South, Range 1 East, W.M.; thence North 00°47'47" West, a distance of 389.70 feet; thence on a 190.99 foot radius curve right (the long chord of which bears North 28°18'21" East, a distance of 185.78 feet) 194.01 feet; thence North 57°24'29" East 113.85 feet; thence on a 1909.72 foot radius curve right (the long chord of which bears North 61°59'28" East, a distance of 305.19 feet) 305.52 feet; thence North 66°34'26" East 315.61 feet; thence on a 1145.92 foot radius curve left (the long chord of which bears North 61°44'26" East, a distance of 193.10 feet) 193.33 feet; thence North 56°54'26" East 155.18 feet; thence on a 1112.00 foot radius curve right (the long chord of which bears North 64°11'13" East, a distance of 281.81 feet) 282.57 feet; thence North 71°28'00" East 39.63 feet; thence on a 216.36 foot radius curve left (the long chord of which bears North 45°08'57" East, a distance of 191.84 feet) 198.76 feet; thence North 18°49'54" East 20.78 feet; thence on a 770.00 foot radius curve left (the long chord of which bears North 14°33'42" East, a distance of 114.66 feet) 114.77 feet; thence North 10°17'30" East 292.85 feet; thence on a 370.00 foot radius curve left (the long chord of which bears North 02°33'32" East, a distance of 99.57 feet) 99.87 feet to a point of compound curvature; thence on a 225.00 foot radius curve left (the

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Page 2 of 2
File 07
November 19, 2020

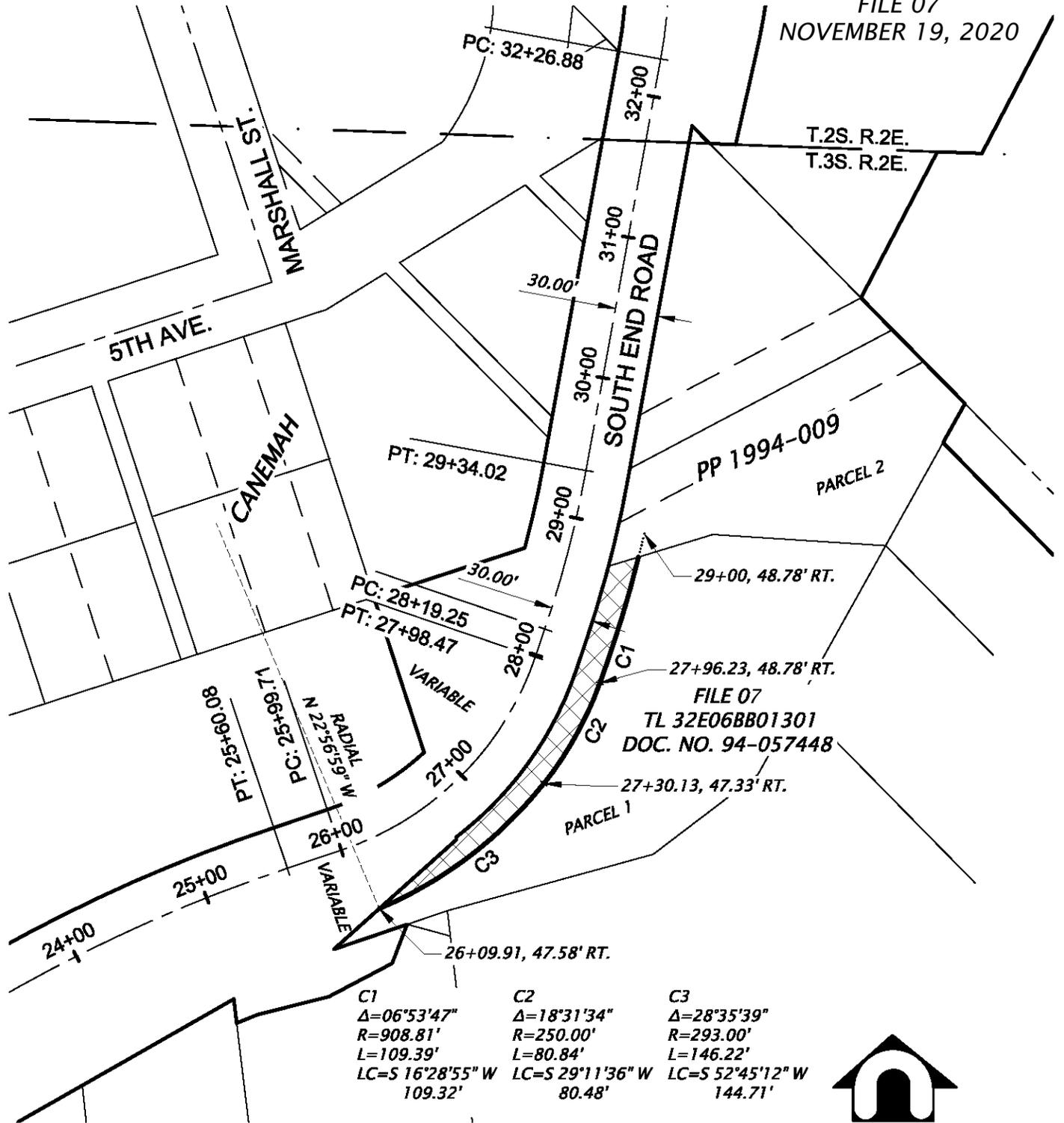
long chord of which bears North 12°51'52" West, a distance of 60.22 feet) 60.40 feet to Engineer's Center line Station 33+87.15.

Bearings are based on the Oregon Coordinate Reference System, Portland Zone, NAD 83 (2011) epoch 2010.00.

This parcel of land contains 4,865 square feet, more or less, outside the existing right of way.

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EXHIBIT "B-7"
PAGE 1 OF 1
FILE 07
NOVEMBER 19, 2020

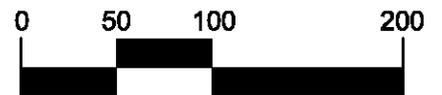


C1 Δ=06°53'47" R=908.81' L=109.39' LC=S 16°28'55" W 109.32'	C2 Δ=18°31'34" R=250.00' L=80.84' LC=S 29°11'36" W 80.48'	C3 Δ=28°35'39" R=293.00' L=146.22' LC=S 52°45'12" W 144.71'
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LEGEND:



PARCEL 1: SUBTERRANEAN EASEMENT
4,865 SQ. FT. ± (0.112 AC. ±)



SOUTH END ROAD AT MP 3.8, PROJECT NO. 22270



**DAVID EVANS
AND ASSOCIATES INC.**

2100 S River Parkway, Suite 100
Portland Oregon 97201
Phone: 503.223.6663



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with PBS Engineering & Environmental, Inc. for the
Redland Road Turn Lanes at Ferguson and Bradley Project**

Purpose/Outcome	Contract will provide project management, plans, specifications, and estimation design services for Redland Road Turn Lanes at Ferguson and Bradley.
Dollar Amount and Fiscal Impact	Contract total \$289,000.00
Funding Source	Community Road Fund (CRF)
Duration	June 30, 2022
Previous Board Action/Review	None
Strategic Plan Alignment	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. How does this item align with the County's Performance Clackamas goals? The project will: a. Build a strong infrastructure, and b. Ensure safe, healthy and secure communities.
Counsel Review	1. Date of Counsel review: 11/17/20 2. Initials of Counsel reviewer: AN
Procurement Review	Was the item processed through Procurement? Yes
Contact Person	Bob Knorr, Project Manager, 503-742-4680
Contract No.	3030

Background:

The consultant contract will provide project management; environmental and stormwater management services; utility coordination; traffic engineering; public outreach; development of plans, specifications and estimates; right-of-way services; and bid assistance through bid award for the Redland Road Turn Lanes at Ferguson and Bradley Project.

A Road Safety Audit(RSA) was conducted for Redland Road in May of 2018 and identified that key corridor intersections experience high volumes of left turns, which results in high speed rear end or turning movement collisions. The RSA recommends improving safety by adding left-turn lanes from Redland Road to the minor connecting streets. This project will utilize Community Road Funds to modify the existing intersections to add left-turn lanes from Redland Rd to the minor connecting streets at Ferguson Road and Bradley Road.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on February 26, 2020. Proposals were opened on March 25, 2020. The County received three (3) Proposals: Kittelson & Associates; KPFF; and PBS Engineering & Environmental, Inc. An evaluation committee of four DTD personnel evaluated the proposals. The evaluation committee originally scored KPFF the highest. However, after months of negotiating, the Department and KPFF staff could not agree to an acceptable compensation amount for the design fee. Negotiations were halted with KPFF and negotiations were initiated with the next highest scoring proposer, PBS Engineering. After multiple discussions, the statement of work and project fees were negotiated and finalized.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with PBS Engineering & Environmental, Inc. for the Redland Road Turn Lanes at Ferguson and Bradley Project.

Sincerely,

Bob Knorr
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3030**

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

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2022**.
- 2. Scope of Work.** Contractor shall provide the following personal services: consultant services to assist in the Redland Road turn lanes at Ferguson and Bradley project (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **two hundred eighty-nine thousand dollars (\$289,000.00)**, 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. 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: Bob Knorr.

- 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, and Exhibit B.

7. Contractor and County Contacts.

Contractor	County
Administrator: Ken Rehms, P.E. Phone: 503-248-1939 Email: ken.rehms@pbsusa.com	Administrator: Bob Knorr Phone: 503-742-4680 Email: RKnorr@clackamas.us

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

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** 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 the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 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 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. 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.

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.

**EXHIBIT A
PERSONAL SERVICES CONTRACT
SCOPE OF WORK**

The Consultant shall provide project management, environmental and stormwater/hydraulic services, utility coordination, traffic engineering, public outreach, and the development of both preliminary design criteria and final PS&E (Plans, Specifications and Estimates) design, right-of-way services, and bid assistance for the “Redland Rd Turn Lanes at Ferguson and Bradley Project.”

I. BACKGROUND

A Road Safety Audit (“RSA”) was prepared for Redland Road in May 2018 that found key corridor intersections experience high volumes of left turns, which results in high speed rear end or turning movement collisions. A recommended mitigation is to add left-turn lanes from Redland Rd to the minor connecting streets.

II. PROJECT UNDERSTANDING

The project will modify the existing intersections to add left-turn lanes from Redland Rd to the minor connecting streets at Bradley Rd and Ferguson Rd. Stormwater management shall be designed and constructed utilizing Best Management Practices (“BMP”) and Low Impact Development Approaches (“LIDA”) per Water Environmental Services design standards as adopted by Clackamas County Department of Transportation and Development (“DTD”).

Project Limits:

Redland Rd from Bradley Rd to Ferguson Rd. Proposed realignments or upgrade extents shall be limited as much as practical.

Lane Configuration/Geometry:

Redland Rd: Generally, 2-lane cross section with paved shoulder

Bradley Rd: 2-lane cross section with paved shoulder

Ferguson Rd: 2-lane cross section with paved shoulder

Water Quality/Quantity:

Best Management Practices (“BMP”) and Low Impact Development Approaches (“LIDA”) per Water Environmental Services design standards as adopted by Clackamas County Department of Transportation and Development.

Franchise Utilities:

Relocate overhead as necessary, relocate for utility conflicts by utilities.

Sanitary/Water:

No changes to sanitary/water are anticipated with the exception of adjusting the locations of a few hydrants.

Natural Resources: No impacts are anticipated. If impacts are unavoidable, additional services needed to address those impacts will be covered by a contract amendment.

Landscaping:

Grass seed shall be shown to match existing landscaping as needed.

Public Involvement/Outreach:

Public involvement will consist of mailed public information and a display board that can be used at a CPO meeting or community open house and posted online.

Right-of-Way (“ROW”):

Assumed up to 15 files for ROW and/or easement acquisitions; up to 8 parcels may be acquired using an Administrative Determination of Just Compensation (“ADJC”) process, and 7 may require appraisals and review appraisals for the acquisition process. Right-of-way acquisition services will be provided as a contingency task as outlined in the following scope of work.

The project is to be completed in two phases. The first phase is preliminary engineering and bidding. The second phase is construction. Construction phase services are not included in this scope of work and the County may request additional scope of work services at a later date for the second phase.

III. SPECIFIC SCOPE OF SERVICES

SUMMARY OF WORK

PBS Engineering and Environmental, Inc., the “Consultant” shall provide services including project management, environmental and stormwater/hydraulic services, utility coordination, traffic engineering, public outreach, and the development of both preliminary design criteria and final PS&E (Plans, Specifications and Estimates) design, right-of-way services, and bid assistance up through bid award for this project based on the scope of services described herein.

- Task 1.0 Project Management and Project Coordination
- Task 2.0 Survey, Field Investigations and Mapping [Reserved]
- Task 3.0 Environmental Services
- Task 4.0 Stormwater / Hydraulics Related Services
- Task 5.0 Utility Coordination
- Task 6.0 Traffic Engineering and Management
- Task 7.0 Preliminary Design (30%)
- Task 8.0 Public Involvement/Outreach
- Task 9.0 Final Design (60%, 90%, and 100% Bid Ready)
- Task 10.0 Right-of-Way Research, Descriptions, Appraisals and Acquisitions [Contingency Task]
- Task 11.0 Bid and Award Assistance

The duration of the design of this project is assumed to be from October 2020 through February 2022 for the completion of design and right-of-way tasks. Bidding and Construction will occur between April 2022 and December 2022. This scope of services does not include construction engineering or construction support but may be added at the discretion of the County towards the end of the design phase through a contract amendment.

Task 1.0 Project Management and Project Coordination

Consultant shall provide management and coordination of services under this Scope of Work (SOW) for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

1.1 Administration & Record Keeping

Consultant shall:

- Prepare a Project design schedule using the Critical Path Method (“CPM”). The Project schedule must include all major authorized tasks as agreed upon by the Parties, Project design team meetings, and milestones (type and date) specified in this SOW and required to complete all services under this Contract. Updates to the Project schedule shall be made during the course of the Project if milestone dates are modified. For budgeting purposes, it is assumed that up to two (2) Project schedule updates will be necessary.
- Prepare invoices and progress reports. For budgeting purposes, it is assumed that up to eighteen (18) progress reports will be necessary. Each progress report must:
 - Include a summary of previous period’s activities and the planned activities for the upcoming period;

- Identify percentage completed of each Task/Deliverable;
- Reconcile the budget with the actual amount billed to date;
- Identify unresolved issues and concerns that may affect the SOW, schedule and/or budget for services.
- Develop and maintain a Project file to include engineering computations, assumptions, meeting agendas and minutes, working drawings, quality control and review documentation, correspondence, and memoranda.

Task 1.1 - Deliverables and Schedule:

Consultant shall provide:

- *Project Design Schedule submitted within five (5) business days of Notice to Proceed (NTP). Submit electronically in PDF format and electronic file (MS Project) format to the County Project Manager (“CPM”).*
- *Up to 2 updated Project Design Schedules, as necessary, via timeline agreed to by CPM.*
- *Progress reports and invoices submitted electronically to CPM no later than the 20th calendar day of the month following the reporting period.*

1.2 Coordination

Consultant shall:

- Coordinate with the CPM as the main point of contact for coordination and management of Consultant services under the Contract;
- Contact other County staff, and regulatory County staff, if necessary, throughout the Contract, to gather any additional information needed for the Project, Project site, regulations and guidance;
- Provide overall management, direction and coordination of staff (including sub-consultants, if any) to include any necessary internal Consultant staff meetings;
- Contact CPM via telephone on a biweekly basis to provide Project status information

Task 1.2 - Deliverables and Schedule:

Consultant shall provide:

- *On-going coordination and communication as needed to appropriately manage the services under this Contract (no tangible deliverables for this task).*

1.3 Project Meetings

1.3.1 Project Kickoff Meeting

Consultant shall prepare for and attend a Project kickoff meeting. The Project kickoff meeting will be held at the Department of Transportation offices of Clackamas County or via web-based platform with the CPM, the Consultant’s PM and other necessary project stakeholders and Consultant staff in attendance. The County will prepare the meeting agenda with input from the Consultant. The purpose of the Project kickoff meeting is to review Project issues such as SOW; work products and deliverables; schedules; budgets; right of way; utility coordination/design; design criteria; guidance documents and standards, and quality control. The County shall schedule Project kickoff meeting within five (5) business days of (“NTP”). The County shall prepare draft and final meeting minutes to be distributed to Consultant and all other meeting participants. For budgeting purposes, it is assumed that up to two (2) Consultant staff shall attend the two (2) hour Project kickoff meeting.

1.3.2 Project Development Team Meetings

Consultant shall prepare for and attend a 30% Preliminary Design Meeting. The Preliminary Design Meeting will be held at the Department of Transportation offices of Clackamas County or via web-based meeting platform with the CPM, the Consultant’s PM and other necessary project stakeholders and Consultant staff in attendance. The County will prepare the meeting agenda with input from the Consultant. The County shall prepare draft and final meeting minutes to be distributed to Consultant and

all other meeting participants. For budgeting purposes, it is assumed that up to two (2) Consultant staff shall attend the in-person two (2) hour PDT meeting.

Task 1.3 Assumptions

- The County will provide draft meeting agenda submitted electronically to Consultant for review five (5) business days prior to meeting.
- County will provide draft meeting minutes submitted electronically to Consultant for review.

Task 1.3 - Deliverables and Schedule

For each meeting, Consultant shall provide:

- *Feedback to County on draft meeting agendas and meeting minutes within two (2) business days..*

Task 2.0 Survey, Field Investigations and Mapping [RESERVED]

Note: Survey and base mapping will be provided by the County.

Task 3.0 Environmental Services

The County will obtain Rights of Entry (“ROE”) for field reconnaissance work. The Consultant will provide list of properties requiring ROE’s for research disciplines no less than five (5) weeks before such ROE’s are required to perform work on private parcels.

The following tasks will be completed by the Consultant to identify wetland/Ordinary High Water (“OHW”) resources and hazardous materials, as well as to inform permitting needs for the project:

3.1 Wetland/OHW Field Investigation

Consultant shall conduct wetland/waters delineation fieldwork to identify the jurisdictional boundaries of any wetlands and/or waters that occur within the Project Study Area (PSA). Prior to the field investigation, Consultant will conduct a review of publicly available information necessary to determine the presence of wetlands onsite. This information includes National Wetland Inventory (NWI) data, NRCS county soil survey data, and aerial imagery. The field investigation will be performed to identify the extent of jurisdictional wetlands and waterways in the study area. Best professional judgement will be used to determine whether wetlands and/or waters are potentially jurisdictional at either the state level, or both the state and federal levels.

The boundaries of wetlands shall be delineated based on the presence of wetland hydrology, hydric soils, and hydrophytic vegetation, in accordance with the “Routine On-site” determination methodologies of the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). The boundaries of waters will be delineated based on ordinary high water mark (OHWM) elevation in accordance with U.S. Army Corps of Engineers (Corps) and Oregon Department of State Lands (DSL) guidelines. All wetland and waters boundaries shall be flagged with pin flags and/or plastic flagging and labeled alpha-numerically in the field so they are clearly identifiable to the County’s surveyors. A sketch map of approximate wetland and waters boundary boundaries shall be provided to the County so that their survey crew can locate and survey each point.

Representative photographs will be taken throughout the study area to support findings. After the County surveys the wetland and waters points and provides a survey point file to the consultant design team, the Consultant will review the survey and will create a CAD file of the wetland and waters boundaries for use by the design team.

Following completion of the fieldwork, Consultant shall prepare a Wetland Memorandum describing the methodology and results of the fieldwork. The memorandum shall include data collected on the soils, hydrology, and vegetation within the PSA. Graphics shall depict the topography, soil mapping, National and/or Local Wetland Inventory (N/LWI) mapping, aerial and ground level photographs, and the locations of the sample plots and surveyed wetland boundaries. If there are wetlands/OHW within the potential impact area, the Consultant will coordinate with the County to determine if all impacts to

wetlands/OHW can be avoided, or if not, then the impacts to USACE-regulated wetlands and OHW can be avoided. Consultant will advise the County of permitting implications during Preliminary Design as needed.

Task 3.1 Assumptions

- The County will provide site access prior to the field investigation;
- Study area boundaries will be clearly identified prior to the County's site visit to conduct a survey; and
- The County will survey wetland and waters boundaries and will provide a CAD file of the survey points to Consultant.
- Informal environmental coordination with County.

Task 3.1 Deliverables

Consultant shall provide:

- *Sketch map of approximate wetland and waters boundaries for County surveyor's use*
- *Wetland Memorandum*

Task 4.0 Stormwater / Hydraulics Related Services

Consultant shall provide stormwater management related design services under this SOW for delivery of Tasks and Deliverables according to the agreed upon delivery schedule.

4.1 Stormwater Management Design

The purpose of this task is to design stormwater systems for the conveyance and treatment of drainage in the Project.

4.1.1 Roadside Channel Conveyance

Design stormwater conveyance facilities to collect and carry roadway runoff per Chapter 4 of the Clackamas County Road Standards.

Consultant shall:

- Delineate on-site drainage basins, calculate peak flow rates for design, model the proposed conveyance network, and calculate hydraulic grade line to check that proper freeboard design requirements are being met.
- Review existing conditions and document observations downstream of locations where flow is leaving the Project right-of-way for deficiencies.
- Consultant shall model ditches to calculate water surface elevation, depth, and velocity and provide channel lining design recommendations per FHWA HEC-15, Design of Roadside Channels with Flexible Linings.

4.1.2 Stormwater Quality Design

Design stormwater management facilities to provide water quality treatment of roadway runoff per local agency standards.

Consultant shall:

- Define Contributing Impervious area.
- Delineate on-site drainage subbasins.
- Identify treatment Best Management Practice ("BMP") types applicable for the site.
- Identify potential locations to site facilities within and outside the existing right-of-way.
- Estimate facility size, type and space needs at each of the potential locations.
- Evaluate constraints to siting a stormwater facility (i.e.-drainage area, adjacent grades, roadway safety, presence of existing utilities, protected resource areas, etc.)
- Present and discuss stormwater management strategies with County for meeting the needs of the Project and achieve a final consensus of the preferred strategy.

Task 4.1 Deliverables

Information from this task shall be incorporated into deliverables for Task 4.2.

4.1 Stormwater Design Memorandum

Provide preliminary stormwater design recommendations and document the final stormwater facility design recommendations. Consultant shall prepare a preliminary Stormwater Design Memorandum per Clackamas County guidelines containing preliminary stormwater facility design recommendations. Consultant shall prepare a final Stormwater Design Memorandum to reflect Agency review comments on stormwater facility design recommendations, changes to stormwater facility design due to advancement of the overall Project design, and supporting documentation of the final stormwater facility design.

Task 4.2 Deliverables

Consultant shall provide:

- *Draft Stormwater Design Memorandum (PDF) due with the Preliminary Design submittal.*
- *Final Stormwater Design Memorandum (PDF) due with the Final Plans.*

Task 5.0 Utility Coordination

5.1 Utility Coordination

Consultant shall support the County with utility coordination efforts including:

- Review utility as-built plans and update survey topographic base map.
- Prepare a Utility Conflict Spreadsheet and map with preliminary design submittal for County to use to notify utilities of potential conflicts.
- Provide updated Utility Conflict Spreadsheet map with 60%, 90% and Final Plan submittals.
- Participate in one meeting with affected utilities at the project site to resolve outstanding issues.

Task 5.0 Assumptions:

County shall be responsible for:

- Initiating and maintaining contact with utility companies throughout project development.
- Obtaining utility company as-builts.
- Preparation of formal letters to utility companies relating to identification of conflicts and needed relocations.

Task 5.0 Deliverables:

Consultant shall provide:

- *Updated survey topographic base map.*
- *Utility Conflict Spreadsheet(s) and Map(s) with Preliminary, 60%, 90% and Final plan submittals.*

Task 6.0 Traffic Engineering and Management

6.1 Traffic Analysis

Consultant shall:

- Obtain or collect weekday AM and PM peak period turning movement vehicle classification counts at the intersections of Ferguson Rd and Redland Rd and Bradley Rd and Redland Rd. Turning movement counts shall be collected on a Tuesday, Wednesday or Thursday of a non-holiday week, between the hours of 6:00 AM – 9:00 AM and 3:00 PM – 6:00 PM.
- Use prior available traffic data from 2018, supplied by the County, and apply a growth factor.
- Prepare a brief technical memorandum describing the recommendations for storage length needs at the study intersections, based on estimated future 20-year weekday AM and PM peak hour traffic volumes.

6.2 Temporary Traffic Control Plans

Consultant shall:

- Create temporary traffic control plans. Traffic control plans are used to describe how the existing roadway area is divided up between live traffic and the construction site. Plan sheets also identify the type, quantity, and location for temporary traffic control devices. Plans must include, but are not limited to the following information: staging plans, lane shifts, lane and shoulder widths, lane closures, road closures, temporary detour, temporary diversions, temporary striping, temporary signing, cutting sections at critical areas with dimensions and other relevant information.

Plans must meet the requirements of section 290 of the Clackamas Roadway Standards, Oregon Standard Drawings, The Oregon Temporary Traffic Control Handbook, and the Manual on Uniform Traffic Control Devices (MUTCD).

6.3 Signing & Pavement Marking Plans

Consultant shall:

- Prepare combined plans for the permanent signing and pavement markings associated with the proposed improvements. The design must be completed in accordance with applicable MUTCD and County standards.

Task 6.0 Deliverables:

Consultant shall provide:

- *Temporary traffic control and staging plans incorporated into 60%, 90%, and 100% plans.*
- *Signing & Striping plans incorporated into 60%, 90%, and 100% plans.*

Task 7.0 Preliminary Design (30%)

7.1 Design Criteria

Consultant shall prepare draft and final design criteria. Design criteria shall be consistent with AASHTO's A Policy on Geometric Design of Highways and Streets; Clackamas County Transportation System Plan ("TSP") Rural Arterial Cross Section; and Clackamas County Roadway Standards.

Consultant shall present the design criteria in a table or matrix format listing all conditions, assumptions and minimum standards for the roadway design elements of the Project. This includes the following:

- Determine design speed
- Determine sight distance considerations
- Determine cross slope, horizontal curves, and super-elevation
- Determine maximum grade, vertical curves
- Determine turn lane elements:
 - Taper rate
 - Storage length
 - Deceleration distance
- Determine cross section elements:
 - Number and width of travel lanes
 - Shoulders
 - Bikeways
- Determine need for roadside barriers

7.2 Horizontal and Vertical Alignments (30% submittal)

This task shall develop alternatives to be evaluated based on the design criteria to meet the overall project needs, as well as to reach agreement on the preferred alternative (1).

Consultant shall:

- Design one preferred alignment alternative based on consideration of traffic analysis, needed safety improvements, property/grading impacts, and design criteria, (a County preferred "center-south" alternative with separate tapered-section intersection footprints for Ferguson and Bradley

each). Provide line work for a comparison of tapered-sections versus a continuous left-turn lane layout, between the intersections; i.e. “lane comparison layout”.

- Design a finish grade profile for the preferred “center-south” alternative which minimizes grading impacts and provides for a minimum overlay or grind/inlay while minimizing any full pavement reconstruction.
- Collaborate with County staff on review of the preferred alternative to discuss the preliminary design, the grading limits (daylight lines), lane comparison layout, design criteria, and its overall full project footprint.
- Provide a conceptual design strip map showing the preferred alternative configuration and additional line work for a continuous 3-lane option.
- Provide a 30% design strip map showing the final selected preferred alternative configuration.

7.3 Stormwater Conveyance, Water Quality and Detention Concept Alignment and Grade (30% submittal)

Based on the storm drainage memorandum, the Consultant shall design preliminary drainage conveyance, water quality, and profile grades for the preferred alternative. This shall validate the stormwater disposal locations and depth of the storm system. This shall also provide locations of potential utility conflicts and potholing needs.

7.4 Construction Estimate

Consultant shall provide quantities and 30% construction cost estimate for the preferred alternative.

7.5 Design Memorandum

Consultant shall provide a brief 30% design memorandum summarizing:

- Alternatives considered and the recommended alternative.
- Anticipated environmental documentation and permits that will be required for the project including information regarding permit application submittal requirements, typical timelines, and potential mitigation requirements.
- Anticipated right of way acquisition properties
- Preferred Stormwater Management solutions

Task 7.0 Deliverables:

Consultant shall provide:

- *Draft and Final design criteria electronically (one electronic copy in PDF form)*
- *Conceptual Design Strip Map for preferred alternative and 3-lane option (one electronic copy in PDF form)*
- *30% Strip Map of Preferred Alternative (one electronic copy in PDF form)*
- *30% Cost Estimate*
- *30% Design Memorandum*

Task 8.0 Public Involvement/Outreach

The Consultant will provide support to the County’s community relations specialist with preparation of documents to be distributed or made available to the general public.

Consultant shall:

- Provide project information in narrative format for County to incorporate into project website and / or project flyers.
- Provide a graphically formatted aerial map, showing the project footprint for inclusion on the County’s website and for County use in public outreach.

Task 8.0 Assumptions:

- County staff will be responsible for final production of mailers and or information boards and for making presentations to the public and other stakeholder organizations.

- Consultant staff will not attend community open house events.

Task 8.0 Deliverables:

Consultant shall provide:

- *Narrative in Word format for County incorporation into information shared with the public.*
- *One draft and final aerial map graphic in PDF form*

Task 9.0 Final Design (60%, 90% and 100% Bid Ready) -Plans, Specifications, and Estimate, (PS&E)

The Consultant will advance the recommended alternative from the Preliminary Design (30% design) stage to the 100% complete stage.

Consultant shall:

- Conduct strategy work sessions in person or on the telephone to keep the project team informed about issues, decisions, and impacts.
- Conduct 60% and 90% design review with County PM, via County comments and response log.
- Prepare up to 7 Type I Design Modification requests for County review and approval. Based on cursory review, anticipated Modifications include:
 - o Roadside & Clear Zone (245)
 - o Bicycle Improvements (250.4, b) (8' lanes req'd per Comp. Plan)
 - o Horizontal Curves (250.6.1, a.1)
 - o Design Intent for Horizontal Curves (250.6.2) (Winding Alignment)
 - o Lane widths (250.6.5) + Roadway Cross Section (250.1.1)
 - o Intersection landing at Ferguson (250.7.3)
 - o Minimum roadway gradient less than 1% without curb/gutter on Redland (250.7.1)
- Complete engineering drawings for submittal to the County at 60%, 90%, and 100% milestones and perform quality assurance and in-house independent design checks and plan review of all drawings and related quantities. All plans will be drafted with the latest version of AutoCAD software and the final CAD drawings provided through a FTP site or on a CD.
- Provide relevant plan drawings that include at a minimum title, typical sections, erosion control plans, stormwater plans, construction staging and temporary traffic control, standard details, and other required drawings for submittal to County for review.
- Consultant shall prepare a ROW Impact Map for each affected property (up to 15 properties), developed to County standards. County will provide an example if needed. County will review and provide feedback to Consultant if needed. Consultant will make any necessary changes requested by County.
- Calculate quantities and develop an engineer's construction cost estimate for submittal at each plan development milestone (60%, 90%, and 100%) and prepare a construction schedule prior to 100%.
- Prepare relevant sections of specifications based on the 2021 Oregon Standard Specifications for Construction. Produce special provisions for the project using standard ODOT boilerplate special provisions and County boilerplate special provisions to the specifications in Part 00100 – General Requirements.
- Revise and submit final Special Provisions based on comments received during County reviews.
- Provide responses to County comments and response logs for 60%, 90% and 100% milestones on PS&E documents.
- Make corrections as required by County and submit final plans to County (both documents and electronic copies).
- Complete Design Memorandum at 90% milestone.

The Consultant shall prepare plan sheets according to the following table:

Table 9-1

Name of Sheet	Scale	Estimated # of Sheets	60% PS&E Submittal	90% PS&E Submittal	Final Submittal
Title Sheet, Sheet Index & Standard Drawings (County / ODOT)	NTS	1	X	X	X
Legend & Abbreviations / General Notes	NTS	1	X	X	X
Typical Sections	NTS	2	X	X	X
Construction Details (Intersection Grading & Driveways)	NTS	5	X	X	X
Erosion Control Plans & Details & General Notes	1"=50'	3	X	X	X
Roadway Plan & Profiles	1"=30'	7	X	X	X
Stormwater Plan & Details (including WQ Facility)	1"=20'	3	X	X	X
Temporary Traffic Control Plan	1"=30'	4	X	X	X
Sign & Striping Plans & Details	1"=30'	2	X	X	X

Task 9.0 Deliverables:

Consultant shall provide:

- Design Modifications
- 60%, 90%, and 100% Engineering Drawings (11"X17"), 90% and 100% Specifications and Bid Schedule, documentation of 60%, 90% and 100% review comments, Engineer's Estimates, final technical reports,, and Construction Schedule at end of Final Design
- 100% Engineering drawing files in Autodesk Civil 3D format, version 2019 to 2021 acceptable
- ROW Impact Map(s) in PDF format to CPM per the schedule developed in Task 1 Project Management.

Task 10.0 Right-of-Way Research, Descriptions, Appraisals and Acquisitions [Contingency Task]

This task identifies specific deliverables that the County at its discretion may elect to authorize Consultant to produce. Consultant shall only complete Task 10 and the identified deliverables if written (email acceptable) NTP is issued by the County.

Consultant shall provide complete right-of-way services as described below for up to 7 right-of-way files as identified during the PE phase of the Project.

10.1 Right-of-Way and Real Property Acquisition Services

Consultant shall conduct the ROW activities for all properties in accordance with the most current version of the following:

- ORS 35, with reference to the Uniform Act
- USPAP
- County ROW acquisition policies and procedures (which are guided by the ODOT ROW Manual)

The recommended approach to ROW coordination with the County is to:

- Designate a ROW PM to communicate directly with the County ROW PM or Designee
- The Consultant ROW PM should disseminate information and provide direction to the rest of the ROW team
- Hold an initial ROW coordination meeting with County and Consultant ROW staff to discuss County policy and procedure and ROW acquisition strategy.

Consultant shall use County versions of all forms, spreadsheets, brochures and pamphlets referenced in the “ODOT Right of Way Manual” and needed to complete work associated with Task 10.0. These forms, spreadsheets, brochures and pamphlets shall not be altered without written permission from the County. They may be obtained through the County Right-of-Way Manager or Designee.

Consultant shall track status for all ROW files to be acquired for the project in the Excel spreadsheet format provided by County. Consultant should coordinate the details of this process with the County Right-of-Way Manager or Designee at the ROW Coordination meeting.

Consultant shall provide ROW acquisition services, following County policies and procedures. It is assumed a total of 15 acquisitions are required for the project for which title reports for all permanent easements will be needed in addition to maps and descriptions, General Information Notice (GIN) letters, limited appraisals and reviews, acquisition/negotiation, and closing assistance will be needed. Out of the 15 acquisitions, it is assumed up to 8 may be acquired using an Administrative Determination of Just Compensation (ADJC) process, and 7 may require appraisals and review appraisals for the acquisition process.

The County intends to acquire the temporary and permanent easements that are estimated to be valued less than \$10,000 using an ADJC process. ADJC values will be determined and prepared by County staff through analysis and review of the sales used in the appraisal of a similar zoned property. One appraisal and appraisal review for each type of property and/or each property considered to be complex and outside the scope of the ADJC process will be needed. It is assumed that appraisals will be taking and damage appraisal formats.

It is assumed that the permanent acquisitions shall be acquired in the County’s name and that there will be no displaced persons.

10.1 Deliverables:

Consultant shall provide:

- *Preliminary Title Reports (up to 15) for Property Acquisitions.*

10.2 Right-of-Way Research [RESERVED]

Note: Work under this task to be provided by the County.

10.3 Right-of-Way Strip Map [RESERVED]

Note: Work under this task to be provided by the County.

10.4 Right-of-Way Descriptions & Exhibit Maps

County shall perform ROW data research as necessary to prepare for and support all Project activities. With information provided by the County, the Consultant will produce Project maps and reports as called for in subsequent tasks. Consultant shall review general Project background documentation, recorded surveys and conveyance documents provided by the County.

County shall develop and provide a centerline description from one end of the project limits to the other to be used by the County with their Resolution of Necessity for the project. Consultant will review and provide feedback to County if needed. County will make any necessary changes and resubmit information to Consultant.

For each file, Consultant shall prepare a ROW Impact Map, developed to County standards. County will provide an example if needed. County will review and provide feedback to Consultant if needed. Consultant will make any necessary changes requested by County. ROW Impact Map development is included under Task 10.

For each file, County shall prepare ROW Descriptions and Maps (also known as the legal descriptions, Exhibits A and B, respectively), based upon centerline stationing and in accordance with the current ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide and the Right of Way Engineering Manual. Consultant will review and provide feedback to County if needed.

10.4 Deliverables:

Consultant shall provide:

- *Feedback to County if needed.*

10.5 Right-of-Way Staking [RESERVED]

Note: Work under this task to be provided by the County.

10.6 Preliminary Activities

Upon receipt of authorization to proceed with ROW Acquisition, Consultant shall set up ROW parcel files and prepare to deliver a General Information Notice (GIN), acquisition and relocation brochures, and a copy of the applicable portion of the ROW Acquisition map (marked Preliminary and showing the parcel(s) to be purchased) to all owners and occupants of affected properties. Consultant shall use County GIN form. Consultant shall send GIN's via regular mail approximately 3 to 4 weeks prior to 15-Day Appraisal Notification Letters, if possible. Consultant shall email a copy of each GIN as a separate file to the County ROW Program Manager or Designee.

If the project team agrees it to be appropriate, Consultant shall arrange pre-negotiation contacts with property owners to identify property and project issues that could affect design. A County ROW Agent or Designee shall be present for all such meetings.

Consultant shall prepare and maintain a Diary of Personal Contact (Diary) for each file. The Diary must include the date and means of delivery for all letters and notices and the date and place of all contact with owners and parties with legal interest in the property to be acquired and/or their representatives. Diary entries shall contain appropriate detail including name and date of persons contacted, a summary of important information discussed, a list or name of any supplemental maps, brochures, and diagrams given, and a record of other activities conducted.

Task 10.6 - Deliverables and Schedule

Consultant shall provide:

- *GINs, 1 hard copy to each property owner and 1 electronic copy each to County.*
- *Written summary of any pre-right of way contact meetings with property owners, 1 electronic copy each to County within 2 weeks of NTP for the ROW acquisition phase.*

10.7 Appraisal and Appraisal Review

Consultant shall use appraisers who are licensed in the State of Oregon, experienced and competent in eminent domain appraising, and on ODOT's Qualified Appraisers List. Appraisals for this purpose shall be made in accordance with ORS Chapter 35. One appraisal and appraisal review for each type of property and/or each property considered to be complex and outside the scope of the ADJC process will be needed. Appraisal and Appraisal Review shall be made by different appraisers. It is assumed that appraisals will be taking and damage appraisal formats. It is assumed that appraisal reviews will include a field review of subject and sales used in the valuation process. Special Benefits, if any, must be quantified by the appraiser whether or not there are any compensable damages to the property. Tenant owned improvements included in the acquisition must be identified and segregated in the appraisal.

An initial analysis will be made to determine which files will need appraisals. The analysis will be based on the Exhibits A and B produced in Task 10.4. Consultant will bring the results of the analysis to County ROW Program Manager and CPM for discussion and decision. An appraisal will be needed for all files that are estimated to be valued above \$10,000.

Task 10.7 – Deliverables:

Consultant shall provide:

- *1 hard copy and 1 digital copy of each appraisal and 1 digital copy of each appraisal review to the County for review. The County shall recommend Just Compensation based on the reviewed appraisal. Just Compensation shall be no less than the reviewed appraisal amount. The consultant shall also provide 2 hard copies of each appraisal to the ROW Acquisition Agent for use in Task 10.8.*

10.8 ROW Acquisition

All right of way shall be acquired in the name of Clackamas County as easement. Consultant shall conduct negotiations, on behalf of the County in good faith and in compliance with all federal and state laws and regulations and County policies and procedures. Consultant shall conduct negotiations for acquisition of real property based on Just Compensation issued by the County.

Consultant shall discuss taking title subject to one or more outstanding interests with County ROW Program Manager or Designee prior to making the offer. Consultant shall be responsible for discussing title encumbrances identified on the Preliminary Title Report with the Property Owner and documenting that conversation in the Diary of Personal Contact. Fee owners' and contract purchasers' ownership interests must be identified and offers made appropriately. When impacted by the taking, lessees' interests must also be cleared.

Consultants shall prepare and present to the County a draft Offer Packet for review before any offers are made. All offers will be made by consultant as County's Buyer's Agent. All offers will be made on County letterhead and forms, and will include County contact information. These Offer Packets shall include, but are not limited to, acquisition and relocation brochures, offer-benefit letter, acquisition and relocation summary statements, Terms of the Offer or County Obligations Agreement if applicable, copy of appraisal or appraisal waiver, map of the acquisition, instruments of conveyance and W-9 form (if money is exchanged).

If possible, Consultant shall make offers in person, especially where the acquisition involves either a major impact to the property or the displacement of persons occupying the property. If this is deemed not possible, Consultant shall send offers via certified mail with return receipt request and tracking. Consultant shall make reasonable efforts to make contact with property owners before mailing offers. Factors leading to the decision to send by mail and proof of delivery must be documented in the Report of Personal Interview and file. Delivery is to be periodically tracked to ensure there are no problems and such efforts are to be documented in the Diary.

Consultant shall make every reasonable effort to acquire the ROW expeditiously by negotiation. Consultant shall give property owners reasonable opportunity to consider the offer (statutorily 40 calendar days). Counter offers from the property owner should be accompanied by supportive information the owner believes is relevant to determining the value of the property. Such information shall be reviewed with the County Right of Way Program Manager promptly. Consultant shall attempt to negotiate an approved administrative settlement, but shall not take any coercive action in order to induce an agreement on the price to be paid for the property (49 CFR 24.102(h)). Consultant shall notify County ROW Program Manager or Designee as soon as possible if the property owner retains legal counsel.

Language changes to the documents should be discouraged to the greatest extent possible. Any language changes to the documents shall be submitted to the County Right of Way PM for review and approval/rejection. If language changes are approved, consultant shall include a brief summary of the changes in the Final Report.

- IF the OFFER is ACCEPTED, Consultant shall present a Final Report Packet covering the acquisition of ROW to the County for final approval, payment, conveyance of title and recording. The Final Report Packet shall include County's Final Report form and all other documentation associated with the ROW activities conducted for the file. Consultant shall include satisfactory documentation of signer's authority to sign if Grantor is a Trust, Corporation, Partnership, or Non-Profit. Consultant shall mail or deliver the Final Report Package and email a digital scan of the Package to the County Right of Way Program Manager or Designee in a reasonable amount of time after all signed offer documents have been received by Consultant.
- IF a COUNTER OFFER is received, Consultant shall submit the proposed COUNTER OFFER (exceeding the estimate of just compensation) with a justification letter and owner supplied supporting documentation to the County for approval. If accepted see above.
- IF an acceptable agreement is not reached within the timeframe set by County, Consultant shall prepare and submit a Recommendation for Condemnation (RC) Packet. The RC Packet shall include County's RC form and all other documentation associated with the ROW activities conducted for the file. Consultant shall mail or deliver the packet and email a digital scan of the packet to the County Right of Way Program Manager or Designee within a reasonable amount of time after County's request for RC of the file. Consultant shall also provide to the County the editable versions of any and all documents upon request (e.g. Diary, Obligations Agreement, Conveyance Documents, Offer Letter, Acquisition and Relocation Summaries).

Consultant shall continue documenting the Diary for each file until such time it is turned into the County ROW PM with the Final Report or the RC.

Task 10.8 - Deliverables

Consultant shall provide:

- *Draft Offer Packet for one file to County ROW PM for review*
- *Final Offer Packet for one file to County ROW PM for review and approval*
- *Final Offer Packet sent certified mail or delivered in person for each file.*
- *Final Report Packet for each file to the County – hard copy delivered or mailed and a scan of packet emailed.*
- *If applicable, proposed counter offers with justification information to County ROW PM.*
- *If applicable, Recommendation for Condemnation to County ROW PM - hard copy delivered or mailed and a scan of packet emailed. Editable copies of offer packet documents upon request,*

Task 11.0 Bid and Award Assistance

This task includes the preparation of addenda, as needed, and responding to questions during the bidding phase. Consultant shall respond to questions from County and Construction Contractors about the plans and specifications during the bidding process.

11.1 Questions During Bidding

Consultant's Project Manager, or Consultant's designee(s) approved by County, shall assist County with questions regarding the bid documents and bid process. Consultant shall respond to all questions in writing within 3 day(s) to the CPM.

Consultant shall, during the bidding process, assist the County in responding to Construction Contractors and suppliers' questions. Consultant shall not have any separate communications with Construction Contractors and suppliers to assure that no Construction Contractor or supplier is provided with information not in the bidding documents and that could provide a bidding advantage or disadvantage. Consultant shall prepare answers in addenda format and provide to CPM.

It is assumed for the purpose of developing this proposal that a pre-bid meeting will not be conducted. Consultant shall provide plans and/or specification edits during bid for incorporation into bid addenda. An allowance for one bid addenda is to be provided for.

Task 11.0 - Deliverables:

Consultant shall provide:

- *Plans and/or specification edits for one bid addenda.*

ASSUMPTIONS

The Consultant has made the following additional assumptions related to this project.

1. All permits and application fees shall be paid by Clackamas County, or as a reimbursable expense at cost.
2. Major access management improvements (i.e. parking lot recirculation plans, frontage road designs, etc.) are not included at this time.

COUNTY'S RESPONSIBILITIES

The County will:

1. Coordinate the relationship with adjacent property owners and with the general public.
2. Provide County standard drawings and details when possible.
3. Provide as-built CAD files of recent construction projects.
4. Provide predesign topographic and right-of-way base mapping in CAD format with information necessary for design.
5. Assist in utilities coordination and facilitate the timely receipt of utility data from the private utility companies.
6. Maintain and manage the public involvement mailing list and project press releases.

**EXHIBIT B
FEE SCHEDULE**



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Government Addendum with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Kaiser Creek Solar Project

Purpose/Outcome	<i>Approval of the Government Addendum and agreement package with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Kaiser Creek Solar Project.</i>
Dollar Amount and Fiscal Impact	<i>Dollar amount will consist of savings and credits within the County's electric bill. Kaiser Creek Solar project will provide an estimated \$112,570.00 of savings over the next 20 years.</i>
Funding Source	<i>Existing funds budgeted for electricity</i>
Duration	<i>20 years</i>
Previous Board Action/Review	<i>On February 13, the Board heard an informal presentation of a proposed renewable energy procurement strategy to shift electricity for County operations (excluding special districts) to renewable sources, using a combination of renewable energy certificates, community solar projects, and potentially a PGE program known as 'Green Futures.' On April 28, 2020 (just after the 50th Earth Day) the Board approved this strategy in a policy session.</i>
Strategic Plan Alignment	<p><i>1. How does this item align with your department's Strategic Business Plan goals? This project, a partnership between Facilities (Finance Dept.) and the Sustainability & Solid Waste Program (Dept. Transportation & Development) aligns with the Strategic Energy Management framework and our responsibilities to support the County's carbon neutral goal.</i></p> <p><i>2. How does this item align with the County's Performance Clackamas goals? This project reduces the carbon footprint of the County's operational electricity use, which in turn advances the County towards the goal to be carbon neutral.</i></p>
Counsel Review	<p><i>1. Date of Counsel review: 11/30/202</i></p> <p><i>2. Initials of County Counsel performing review: AN</i></p>
Procurement Review	<i>1. Was the item process through Procurement? Yes.</i>
Contact Person	<i>Eben Polk, Sustainability Supervisor: 503-742-4470, epolk@clackamas.us Jeff Jorgensen, Facilities Director: 503-557-6414, jeffjor@clackamas.us</i>
Contract No.	<i>3382</i>

Background:

The Facilities Division and Sustainability & Solid Waste Program have been working together on a multi-part strategy to reduce the carbon footprint from energy use in County operations. Earlier this year the Board approved the use of a combination of Renewable Energy Certificates (“REC’s”), participation in community solar projects, and eventual participation in PGE’s GreenFuture program, which together will result in a complete transition to clean renewable electricity for core County operations.

This government addendum implements an agreement to provide renewable electricity from one of four community solar projects selected through a process outlined below.

The Oregon legislature created the community solar program in order to promote local, affordable, clean solar power for residential and commercial customers in Portland General Electric (“PGE”) and Pacific Power territories. After the Public Utility Commission (“PUC”) developed rules and a certification process to vet proposed projects, the PUC has authorized and pre-certified several solar projects in PGE territory. A typical community solar project will have 1800 to 2500 kilowatts AC capacity, generating around 4 million kilowatt hours of electricity a year. (For comparison, the Public Services Building uses around 1 million kilowatt hours in a year.)

Community solar projects must be approved by the Public Utility Commission and their oversight agency. All community solar projects set aside a certain percentage of space for larger commercial customers, for small commercial or residential customers, and importantly, 10% of capacity for low income customers. Subscribing customers receive a portion of the produced electricity, which is accounted for on a PGE bill in the form of (a) a bill credit from PGE and (b) a line item reflecting costs paid to the solar project. The net effect is approximately a 5% reduction in electricity costs for commercial customers and long-term cost certainty (up to 20 years). Low income customers are guaranteed 20% lower electricity costs compared to the regular PGE rate.

Procurement Process:

Quotes were collected from the Department of Transportation and Development’s Sustainability & Solid Waste Program in July of 2020. Quotes were requested from four (4) community solar developers with pre-certified projects (that also have land use approval) in PGE territory. We received quotes from three (3) developers focusing on six (6) distinct projects.

Project Name	Project Manager	Size (kW AC)	Annual Output (kWh)	Commercial Rate	Low Income Rate
Skyward Solar	Nautilus Solar Energy, LLC	NO RESPONSE			
Clayfield Solar LLC	Solar Town	2565	4,432,615	\$0.106723	Not quoted
Dover Solar	Solar Town	1980	4,204,945	\$0.106723	Not quoted
Dunn Rd	Neighborhood Power	1848	3,821,140	\$0.10114	\$0.08987
Mt Hope Solar	Neighborhood Power	2502	4,714,390	\$0.10114	\$0.08987
Sandy River Solar	Oregon Shines (TLS Capital)	1850	3,600,000	\$0.10099	\$0.0898
Kaiser Creek Solar, LLC	Oregon Shines (GreenKey)	2000	3,900,000	\$0.10099	\$0.0898

Four of the six projects offer an essentially identical and lowest subscription rate. Oregon Shines, LLC. is quoted at \$0.10099/kwh for the Sandy River and Kaiser Creek projects; and Neighborhood Power OR, LLC. is quoted at \$0.10114 for the Dunn Road and Mt. Hope projects. The other two projects through Solar Town offered a higher subscription rate at \$0.106723 and thus were not considered at this time.

Upon identifying the developers and reviewing the Oregon Community Solar Contract issued by the Public Utility Commission, County Procurement and County Counsel agreed to accept the terms and apply a Governmental Addendum to the agreement package to capture specific ORS statute laws.

Recommendation:

Staff respectfully recommends that the Board approve and sign the Government Addendum with Kaiser Creek Project Manager, LLC. for the Oregon Community Solar Program- Kaiser Creek Solar Project, and authorization for the Finance department to sign on behalf of Clackamas County for future amendments to adjust power usages.

Sincerely,



Eben Polk
Sustainability Supervisor

Placed on the BCC Agenda _____ by Procurement

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #3385**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), and **Kaiser Creek Project Manager, LLC**. (“Contractor”). This Addendum shall be attached to, and incorporated into, the **Oregon Community Solar Program Contract and Disclosure Checklist- Kaiser Creek Solar Project** (“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, this Contract shall continue until 20 years from the Commercial Operation Date (“COD”).
- B. County Contract Administrator.** The County Contract Administrator for this Contract is **Eben Polk**.
- 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 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 checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

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.

- 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.** The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.
- 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. 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.

- H. 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 ninety (90) days written notice to Contractor, upon which Contractor will continue to sell to the County power for the 90-day period until the Contract has terminated; (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.
- I. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- O. 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.
- P. 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.

Signature page to follow.



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 Government Addendum with SR PM, LLC. for the Oregon Community Solar Program- Sandy River Solar Project

Purpose/Outcome	<i>Approval of the Government Addendum and agreement package with SR PM, LLC. for the Oregon Community Solar Program- Sandy River Solar Project.</i>
Dollar Amount and Fiscal Impact	<i>Dollar amount will consist of savings and credits within the County's electric bill. Sandy River Solar project will provide an estimated \$218,815.00 of savings over the next 20 years.</i>
Funding Source	<i>Existing funds budgeted for electricity</i>
Duration	<i>20 years</i>
Previous Board Action/Review	<i>On February 13, the Board heard an informal presentation of a proposed renewable energy procurement strategy to shift electricity for County operations (excluding special districts) to renewable sources, using a combination of renewable energy certificates, community solar projects, and potentially a PGE program known as 'Green Futures.' On April 28, 2020 (just after the 50th Earth Day) the Board approved this strategy in a policy session.</i>
Strategic Plan Alignment	<p><i>1. How does this item align with your department's Strategic Business Plan goals? This project, a partnership between Facilities (Finance Dept.) and the Sustainability & Solid Waste Program (Dept. Transportation & Development) aligns with the Strategic Energy Management framework and our responsibilities to support the County's carbon neutral goal.</i></p> <p><i>2. How does this item align with the County's Performance Clackamas goals? This project reduces the carbon footprint of the County's operational electricity use, which in turn advances the County towards the goal to be carbon neutral.</i></p>
Counsel Review	<p><i>1. Date of Counsel review: 11/30/202</i></p> <p><i>2. Initials of County Counsel performing review: AN</i></p>
Procurement Review	<i>1. Was the item process through Procurement? Yes.</i>
Contact Person	<i>Eben Polk, Sustainability Supervisor: 503-742-4470, epolk@clackamas.us Jeff Jorgensen, Facilities Director: 503-557-6414, jeffjor@clackamas.us</i>
Contract No.	<i>3382</i>

Background:

The Facilities Division and Sustainability & Solid Waste Program have been working together on a multi-part strategy to reduce the carbon footprint from energy use in County operations. Earlier this year the Board approved the use of a combination of Renewable Energy Certificates (“REC’s”), participation in community solar projects, and eventual participation in PGE’s GreenFuture program, which together will result in a complete transition to clean renewable electricity for core County operations.

This government addendum implements an agreement to provide renewable electricity from one of four community solar projects selected through a process outlined below.

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Procurement Process:

Quotes were collected from the Department of Transportation and Development’s Sustainability & Solid Waste Program in July of 2020. Quotes were requested from four (4) community solar developers with pre-certified projects (that also have land use approval) in PGE territory. We received quotes from three (3) developers focusing on six (6) distinct projects.

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Dover Solar	Solar Town	1980	4,204,945	\$0.106723	Not quoted
Dunn Rd	Neighborhood Power	1848	3,821,140	\$0.10114	\$0.08987
Mt Hope Solar	Neighborhood Power	2502	4,714,390	\$0.10114	\$0.08987
Sandy River Solar	Oregon Shines (TLS Capital)	1850	3,600,000	\$0.10099	\$0.0898
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Four of the six projects offer an essentially identical and lowest subscription rate. Oregon Shines, LLC. is quoted at \$0.10099/kwh for the Sandy River and Kaiser Creek projects; and Neighborhood Power OR, LLC. is quoted at \$0.10114 for the Dunn Road and Mt. Hope projects. The other two projects through Solar Town offered a higher subscription rate at \$0.106723 and thus were not considered at this time.

Upon identifying the developers and reviewing the Oregon Community Solar Contract issued by the Public Utility Commission, County Procurement and County Counsel agreed to accept the terms and apply a Governmental Addendum to the agreement package to capture specific ORS statute laws.

Recommendation:

Staff respectfully recommends that the Board approve and sign the Government Addendum with SR PM, LLC. for the Oregon Community Solar Program- Sandy River Solar Project, and authorization for the Finance Department to sign on behalf of Clackamas County for future amendments to adjust power usages.

Sincerely,



Eben Polk
Sustainability Supervisor

Placed on the BCC Agenda _____ by Procurement

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #3386**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), and **SR PM, LLC**. (“Contractor”). This Addendum shall be attached to, and incorporated into, the **Oregon Community Solar Program Contract and Disclosure Checklist- Sandy River Solar Project** (“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, this Contract shall continue until 20 years from the date of contract execution.
- B. County Contract Administrator.** The County Contract Administrator for this Contract is **Eben Polk**.
- 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 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 checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

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.

- 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.** The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.
- 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. 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.

- H. 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 ninety (90) days written notice to Contractor, upon which Contractor will continue to sell to the County power for the 90-day period until the Contract has terminated; (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.
- I. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- O. 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.
- P. 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.

Signature page to follow.

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

SR PM, LLC.

Clackamas County Board of County Commissioners

Authorized Signature Date

Chair Date

Name/Title (Printed)

Recording Secretary

Approved As To Form:

Clackamas County Counsel Date



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Government Addendum with Neighborhood Power OR, LLC. for the
Oregon Community Solar Program- Dunn Project**

Purpose/Outcome	<i>Approval of the Government Addendum and agreement package with Neighborhood Power OR, LLC. for the Oregon Community Solar Program- Dunn Project.</i>
Dollar Amount and Fiscal Impact	<i>Dollar amount will consist of savings and credits within the County's electric bill. Dunn project will provide an estimated \$338,466.00 of savings over the next 20 years.</i>
Funding Source	<i>Existing funds budgeted for electricity</i>
Duration	<i>20 years</i>
Previous Board Action/Review	<i>On February 13, the Board heard an informal presentation of a proposed renewable energy procurement strategy to shift electricity for County operations (excluding special districts) to renewable sources, using a combination of renewable energy certificates, community solar projects, and potentially a PGE program known as 'Green Futures.' On April 28, 2020 (just after the 50th Earth Day) the Board approved this strategy in a policy session.</i>
Strategic Plan Alignment	<p><i>1. How does this item align with your department's Strategic Business Plan goals? This project, a partnership between Facilities (Finance Dept.) and the Sustainability & Solid Waste Program (Dept. Transportation & Development) aligns with the Strategic Energy Management framework and our responsibilities to support the County's carbon neutral goal.</i></p> <p><i>2. How does this item align with the County's Performance Clackamas goals? This project reduces the carbon footprint of the County's operational electricity use, which in turn advances the County towards the goal to be carbon neutral.</i></p>
Counsel Review	<p><i>1. Date of Counsel review: 10/7/202</i></p> <p><i>2. Initials of County Counsel performing review: AN</i></p>
Procurement Review	<i>1. Was the item process through Procurement? Yes.</i>
Contact Person	<i>Eben Polk, Sustainability Supervisor: 503-742-4470, epolk@clackamas.us Jeff Jorgensen, Facilities Director: 503-557-6414, jeffjor@clackamas.us</i>
Contract No.	<i>3382</i>

Background:

The Facilities Division and Sustainability & Solid Waste Program have been working together on a multi-part strategy to reduce the carbon footprint from energy use in County operations. Earlier this year the Board approved the use of a combination of Renewable Energy Certificates (“REC’s”), participation in community solar projects, and eventual participation in PGE’s GreenFuture program, which together will result in a complete transition to clean renewable electricity for core County operations.

This government addendum implements an agreement to provide renewable electricity from one of four community solar projects selected through a process outlined below.

The Oregon legislature created the community solar program in order to promote local, affordable, clean solar power for residential and commercial customers in Portland General Electric (“PGE”) and Pacific Power territories. After the Public Utility Commission (“PUC”) developed rules and a certification process to vet proposed projects, the PUC has authorized and pre-certified several solar projects in PGE territory. A typical community solar project will have 1800 to 2500 kilowatts AC capacity, generating around 4 million kilowatt hours of electricity a year. (For comparison, the Public Services Building uses around 1 million kilowatt hours in a year.)

Community solar projects must be approved by the Public Utility Commission and their oversight agency. All community solar projects set aside a certain percentage of space for larger commercial customers, for small commercial or residential customers, and importantly, 10% of capacity for low income customers. Subscribing customers receive a portion of the produced electricity, which is accounted for on a PGE bill in the form of (a) a bill credit from PGE and (b) a line item reflecting costs paid to the solar project. The net effect is approximately a 5% reduction in electricity costs for commercial customers and long-term cost certainty (up to 20 years). Low income customers are guaranteed 20% lower electricity costs compared to the regular PGE rate.

Procurement Process:

Quotes were collected from the Department of Transportation and Development’s Sustainability & Solid Waste Program in July of 2020. Quotes were requested from four (4) community solar developers with pre-certified projects (that also have land use approval) in PGE territory. We received quotes from three (3) developers focusing on six (6) distinct projects.

Project Name	Project Manager	Size (kW AC)	Annual Output (kWh)	Commercial Rate	Low Income Rate
Skyward Solar	Nautilus Solar Energy, LLC	NO RESPONSE			
Clayfield Solar LLC	Solar Town	2565	4,432,615	\$0.106723	Not quoted
Dover Solar	Solar Town	1980	4,204,945	\$0.106723	Not quoted
Dunn Rd	Neighborhood Power	1848	3,821,140	\$0.10114	\$0.08987
Mt Hope Solar	Neighborhood Power	2502	4,714,390	\$0.10114	\$0.08987
Sandy River Solar	Oregon Shines (TLS Capital)	1850	3,600,000	\$0.10099	\$0.0898
Kaiser Creek Solar, LLC	Oregon Shines (GreenKey)	2000	3,900,000	\$0.10099	\$0.0898

Four of the six projects offer an essentially identical and lowest subscription rate. Oregon Shines, LLC. is quoted at \$0.10099/kwh for the Sandy River and Kaiser Creek projects; and Neighborhood Power OR, LLC. is quoted at \$0.10114 for the Dunn Road and Mt. Hope projects. The other two projects through Solar Town offered a higher subscription rate at \$0.106723 and thus were not considered at this time.

Upon identifying the developers and reviewing the Oregon Community Solar Contract issued by the Public Utility Commission, County Procurement and County Counsel agreed to accept the terms and apply a Governmental Addendum to the agreement package to capture specific ORS statute laws.

Recommendation:

Staff respectfully recommends that the Board approve and sign the Government Addendum with Neighborhood Power OR, LLC. for the Oregon Community Solar Program- Dunn Project, and authorization for the Finance Department to sign on behalf of Clackamas County for future amendments to adjust power usages.

Sincerely,



Eben Polk
Sustainability Supervisor

Placed on the BCC Agenda _____ by Procurement

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #3382**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), and **Neighborhood Power OR, LLC**. (“Contractor”). This Addendum shall be attached to, and incorporated into, the **Oregon Community Solar Program Contract and Disclosure Checklist- Dunn Project** (“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, this Contract shall continue until 20 years from the date of contract execution.
- B. County Contract Administrator.** The County Contract Administrator for this Contract is **Eben Polk**.
- 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 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 checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

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.

- 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.** The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.
- 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. 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.

- H. 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 ninety (90) 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.
- I. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- O. 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.
- P. 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.

Signature page to follow.



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 Government Addendum with Neighborhood Power OR, LLC. for the Oregon Community Solar Program- Mt. Hope Project

Purpose/Outcome	<i>Approval of the Government Addendum and agreement package with Neighborhood Power OR, LLC. for the Oregon Community Solar Program- Mt. Hope Project.</i>
Dollar Amount and Fiscal Impact	<i>Dollar amount will consist of savings and credits within the County's electric bill. The Mt. Hope project will provide an estimated \$296,214.00 of savings over the next 20 years.</i>
Funding Source	<i>Existing funds budgeted for electricity</i>
Duration	<i>20 years</i>
Previous Board Action/Review	<i>On February 13, the Board heard an informal presentation of a proposed renewable energy procurement strategy to shift electricity for County operations (excluding special districts) to renewable sources, using a combination of renewable energy certificates, community solar projects, and potentially a PGE program known as 'Green Futures.' On April 28, 2020 (just after the 50th Earth Day) the Board approved this strategy in a policy session.</i>
Strategic Plan Alignment	<p><i>1. How does this item align with your department's Strategic Business Plan goals? This project, a partnership between Facilities (Finance Dept.) and the Sustainability & Solid Waste Program (Dept. Transportation & Development) aligns with the Strategic Energy Management framework and our responsibilities to support the County's carbon neutral goal.</i></p> <p><i>2. How does this item align with the County's Performance Clackamas goals? This project reduces the carbon footprint of the County's operational electricity use, which in turn advances the County towards the goal to be carbon neutral.</i></p>
Counsel Review	<p><i>1. Date of Counsel review: 10/7/202</i></p> <p><i>2. Initials of County Counsel performing review: AN</i></p>
Procurement Review	<i>Was the item process through Procurement? Yes.</i>
Contact Person	<i>Most knowledgeable person who can answer questions regarding this item</i>
Contract No.	<i>3381</i>

Background:

The Facilities Division and Sustainability & Solid Waste Program have been working together on a multi-part strategy to reduce the carbon footprint from energy use in County operations. Earlier this year the Board approved the use of a combination of Renewable Energy Certificates (“REC’s”), participation in community solar projects, and eventual participation in PGE’s GreenFuture program, which together will result in a complete transition to clean renewable electricity for core County operations.

This government addendum implements an agreement to provide renewable electricity from one of four community solar projects selected through a process outlined below.

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Community solar projects must be approved by the Public Utility Commission and their oversight agency. All community solar projects set aside a certain percentage of space for larger commercial customers, for small commercial or residential customers, and importantly, 10% of capacity for low income customers. Subscribing customers receive a portion of the produced electricity, which is accounted for on a PGE bill in the form of (a) a bill credit from PGE and (b) a line item reflecting costs paid to the solar project. The net effect is approximately a 5% reduction in electricity costs for commercial customers and long-term cost certainty (up to 20 years). Low income customers are guaranteed 20% lower electricity costs compared to the regular PGE rate.

Procurement Process:

Quotes were collected from the Department of Transportation and Development’s Sustainability & Solid Waste Program in July of 2020. Quotes were requested from four (4) community solar developers with pre-certified projects (that also have land use approval) in PGE territory. We received quotes from three (3) developers focusing on six (6) distinct projects.

Project Name	Project Manager	Size (kW AC)	Annual Output (kWh)	Commercial Rate	Low Income Rate
Skyward Solar	Nautilus Solar Energy, LLC	NO RESPONSE			
Clayfield Solar LLC	Solar Town	2565	4,432,615	\$0.106723	Not quoted
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Dunn Rd	Neighborhood Power	1848	3,821,140	\$0.10114	\$0.08987
Mt Hope Solar	Neighborhood Power	2502	4,714,390	\$0.10114	\$0.08987
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Kaiser Creek Solar, LLC	Oregon Shines (GreenKey)	2000	3,900,000	\$0.10099	\$0.0898

Four of the six projects offer an essentially identical and lowest subscription rate. Oregon Shines, LLC. is quoted at \$0.10099/kwh for the Sandy River and Kaiser Creek projects; and Neighborhood Power OR, LLC. is quoted at \$0.10114 for the Dunn Road and Mt. Hope projects. The other two projects through Solar Town offered a higher subscription rate at \$0.106723 and thus were not considered at this time.

Upon identifying the developers and reviewing the Oregon Community Solar Contract issued by the Public Utility Commission, County Procurement and County Counsel agreed to accept the terms and apply a Governmental Addendum to the agreement package to capture specific ORS statute laws.

Recommendation:

Staff respectfully recommends that the Board approve and sign Government Addendum with Neighborhood Power OR, LLC. for the Oregon Community Solar Program- Mt. Hope Project and authorization for the Finance Department to sign on behalf of Clackamas County for future amendments to adjust power usages.

Sincerely,



Eben Polk
Sustainability Supervisor

Placed on the BCC Agenda _____ by Procurement

**CLACKAMAS COUNTY
GOVERNMENTAL CONTRACTING ADDENDUM
Contract #3381**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), and **Neighborhood Power OR, LLC**. (“Contractor”). This Addendum shall be attached to, and incorporated into, the **Oregon Community Solar Program Contract and Disclosure Checklist- Mt. Hope Project** (“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, this Contract shall continue until 20 years from the date of contract execution.
- B. County Contract Administrator.** The County Contract Administrator for this Contract is **Eben Polk**.
- 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 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.
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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.

- 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.** The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.
- 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. 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.

- H. 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 ninety (90) 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.
- I. Compliance.** Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
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- O. 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.
- P. 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.

Signature page to follow.

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

Neighborhood Power OR, LLC.

Clackamas County Board of County Commissioners

Authorized Signature Date

Chair Date

Name/Title (Printed)

Recording Secretary

Approved As To Form:

Clackamas County Counsel Date



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Personal Services Contract with Harper Houf Peterson Righellis Inc.
To provide Monroe Street Improvements for The Development Agency**

Purpose/ Outcomes	Execution of a contract between the Development Agency and Harper Houf Peterson Righellis Inc, for Roadway Design Plans for SE Monroe Street.
Dollar Amount and Fiscal Impact	Total contract value through expiration is, \$1,703,592.00
Funding Source	Clackamas County Development Agency, 453-7491-00-481200-30324 North Clackamas Revitalization Area Urban Renewal District- no County General Funds are involved.
Duration	October 31, 2022
Previous Board Action	Approval of the Development Agency budget allocating funds for the project.
Strategic Plan Alignment	This project will build and provide a strong infrastructure. The project will ensure safe, healthy and secure communities.
Counsel Review	November 24, 2020; AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
Contact Person	Ken Itel, Senior Project Planner - 503-742-4324
Contract#	3097

BACKGROUND: A priority of the North Clackamas Revitalization Area (NCRA) urban renewal plan is to improve neighborhood streets to accommodate all modes of transportation, enhance safety and accessibility, and upgrade storm water management systems. In order to carry out the public improvement goals of the NCRA urban renewal plan, and improve safety and multi-modal connectivity, the Development Agency is proceeding with a project that will include bike and pedestrian facilities, storm drainage and accessibility improvements, and limited new roadway construction, which may include minor street lighting or utility upgrades on SE Monroe Street between SE Linwood Avenue and SE Fuller Road. Segments of SE 72nd Avenue and SE Thompson Road, connecting Monroe to Lot Whitcomb Elementary School, are also included in this project.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS 279B and LCRB Rules on May 7, 2020. Bids were publically opened June 9, 2020. The Agency received three (3) proposals from Harper Houf Peterson Righellis Inc, Century West, and Toole Design. An evaluation committee

comprised of five County personnel scored Harper Houf Peterson Righellis Inc the highest therefor awarding the Contract through October 31, 2022.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Development Agency and Harper Houf Peterson Righellis Inc, for the Monroe Street Improvements project.

Respectfully submitted,

Ken Itel
Senior Project Planner
Clackamas County Development Agency

Placed on the Agenda of _____ by the Procurement Division



CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #3097

This Personal Services Contract (this "Contract") is entered into between **Harper Houf Peterson Righellis Inc.**, ("Contractor"), and Clackamas County Development Agency ("Agency").

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 **October 31, 2022**.
- 2. Scope of Work.** Contractor shall provide the following personal services: **design services for the SE Monroe Street project** ("Work"), further described in **Exhibit A**. If a particular task, or portion of a task, described in Exhibit A is described as "contingent" or "contingency," Contractor may not perform that portion of the Work until Agency has provided Contractor written authorization to do so.
- 3. Consideration.** The Agency agrees to pay Contractor, from available and authorized funds, a sum not to exceed **One Million Seven Hundred Three Thousand Five Hundred Ninety-Two dollars (\$1,703,592.00)**, 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. 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 Agency's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the Agency 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: Ken Itel

- 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 Agency 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 Agency Contacts.

Contractor	Agency
Administrator: Dan Houf Phone: 503-221-1131 Email: dan@hhpr.com	Administrator: Ken Itel Phone: 503-742-4324 Email: Kennethite@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. Agency 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 Agency 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 Agency 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 Agency 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 Agency, Clackamas County, and their officers, elected officials, agents and employees, from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of Agency or Clackamas County, or any department of Clackamas County, nor purport to act as legal representative of Agency or Clackamas County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for Agency or Clackamas County, nor shall Contractor settle any claim on behalf of Agency or Clackamas County without the approval of the Clackamas County Counsel's Office. Agency or Clackamas County may, at their election and expense, assume their 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 Agency 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, Agency 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 Agency 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 Agency employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name Clackamas County and the Agency as an additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

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

This policy(s) shall be primary insurance as respects to the Agency. Any insurance or self-insurance maintained by the Agency shall be excess and shall not contribute to it. Any obligation that Agency 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 Agency, 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 Agency'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 Agency. Agency and Contractor intend that such Work Product be deemed "work made for hire" of which Agency shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to Agency 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 Agency may reasonably request in order to fully vest such rights in Agency. 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, Agency shall have no rights in any pre-existing Contractor intellectual property provided to Agency by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for Agency use only.

13. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to Agency 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 Agency 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 Agency.

14. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, and 27 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the Agency'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 Agency, which shall be granted or denied in the Agency's sole discretion. In addition to any provisions the Agency 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. Agency'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 Agency 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 Agency (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the Agency fails to receive funding, appropriations, or other expenditure authority as solely determined by the Agency; or (B) if contractor breaches any Contract provision or is declared insolvent, Agency may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the Agency, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to Agency all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon Agency's request, Contractor shall surrender to anyone Agency designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the Agency due to a breach by the Contractor, then the Agency 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 Agency, less any setoff to which the Agency is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** Agency 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 Agency nor Contractor shall be held responsible for delay or default caused by events outside the Agency 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 Agency to enforce any provision of this Contract shall not constitute a waiver by Agency 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 Agency 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 Agency 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 Agency is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the Agency 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 Agency 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 Agency with such Key Person's services unless the Agency 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

EXHIBIT A

**Personal Services Contract
Scope of Work**

SCOPE OF WORK

TASK 1: Project Management and Coordination

As part of the overall management of the project, the Contractor will:

- A. Designate and coordinate the Contractor project team.
- B. Schedule, prepare for, attend and document project team meetings. These meetings will be held as needed and will include the Contractor, Agency and Clackamas County (“County”) staff and possibly other project stakeholders. A project kickoff meeting will be held at the Agency’s office at 150 Beaver Creek Road in Oregon City.
- C. Prepare a detailed schedule showing all major tasks, meetings, and review milestones. The schedule must reflect the required milestone dates as shown in Section 3.3 of this RFP.
- D. Prepare detailed monthly progress reports and progress billings and submit to the Agency for approval and payment.
- E. Monitor and manage the project budget.

Contractor Deliverables: Meeting minutes delineating identified design requirements; written identification of specific utility contact persons; engineering schedule; monthly engineering schedule updates.

TASK 2: Public Involvement

Public involvement is one of the key criteria for evaluating the success of the project. The Agency and the County are committed to engaging neighbors and partner organizations early in the design process. Property owners on Monroe, 72nd and Thompson, as well as other neighborhood residents, will have concerns about construction impacts, maintaining access to their homes and the effects of improvements on drainage and traffic patterns.

The City of Milwaukie will also be an active stakeholder, as the city has approved a Monroe Street Neighborhood Greenway Concept Plan. Milwaukie's completion of improvements on Monroe within the city limits would create a continuous bikeway and pedestrian connection from downtown Milwaukie to SE Fuller Road. While Clackamas County has not adopted a greenway concept, the design Contractor should be aware of the proposed Milwaukie design and consider how it will transition to the Agency- designed section of Monroe.

The Contractor will assist the Agency's community relations specialist as well as Agency and County staff on the development of public outreach materials.

The Contractor will be required to address public inquiries and concerns by attending two (2) public meetings and/or open houses, preparing a minimum of six (6) display boards, a strip map and other informational materials for each meeting, and providing assistance with materials needed for mailings, web pages and other public outreach. The Agency will coordinate and set up the meetings.

- A. Coordinate with the Agency's community relations specialist, Agency and County staff.
- B. Provide technical expertise and guidance in preparing for neighborhood meetings.
- C. Prepare displays (up to 6 for each meeting), participate in two neighborhood meetings and provide meeting summaries. A strip map showing the most recent design concept(s) overlaid on an aerial photo is also required for each public meeting.
- D. Prepare and provide informational materials (preliminary design concepts, project scheduling, and construction staging options).
- E. Prepare one flyer for each meeting to be mailed to area businesses and residents. The Agency will develop the mailing list and mail the flyers.
- F. Provide project related information as necessary for inclusion on the Agency's website and other social media platforms.
- G. Provide all deliverables in electronic and hard copy formats.

Contractor Deliverables: One flyer, a strip map and six display boards for each of two meetings.

TASK 3: Finalize Design Criteria

The Contractor will gather field information, finalize design and construction specification requirements, and conduct a comprehensive investigation of all background data that may influence the project. The Contractor will also obtain preliminary title reports and current vesting deeds as needed for properties within the project boundaries.

The Contractor will:

- A. Coordinate with the Agency and other necessary entities to develop design criteria for roadway sections including geometrics, alignments, profiles and cross-sections, storm drainage facilities, bike and pedestrian facilities, sidewalks, signing, striping, flashers, ITS devices, lighting, retaining walls, and other project components.

- B. Research existing utilities and obtain as-built drawings. Coordinate with utilities services such as gas, electrical, telephone, water, sewer and cable/fiber etc. to determine potential utility conflicts, relocation or extension requirements.
- C. Meet with Clackamas County Department of Transportation and Development to identify any additional design requirements.
- D. Finalize design and construction specification requirements.

Contractor Deliverables: Meeting minutes delineating identified design requirements; written identification of specific utility contact persons; existing easement inventory; copies of affected property deeds; photo log.

TASK 4: Field Surveying and Mapping

A detailed existing conditions Base Map and topographic survey was created for SE Monroe Street in late 2017. The selected contractor will be provided full pdf, jpg and CAD files of the survey. It is expected the selected contractor will utilize this Base Map for the project, with supplemental surveying and confidence checks to fill in any data gaps and to document any changes in condition.

The Contractor will use the base map, updated as necessary, for design of the roadway, utility relocation, and storm drainage.

Specific tasks related to field surveying and mapping include:

- A. Obtain preliminary title reports or copies of current deeds for properties impacted by the project.
- B. Utilizing the base map and spot checks as necessary, identify and locate all existing utilities within the project limits and determine possible utility conflicts.
- C. Identify and/or verify existing utility or other easements (access, sidewalk, slope etc.) that could be impacted within the project limits.
- D. Initiate contact with the utilities (e.g. gas, electric, telephone, water, etc.) to coordinate and obtain as-built drawings.
- E. If required to supplement existing base map data, obtain any permissions and/or rights-of-entry on private property to perform surveys. Template Right of Entry (ROE) forms will be supplied by the County Right of Way Agent, filled out by Contractor and returned to Agent for signatures. Contractor then will obtain necessary landowner signatures.
- F. (Contingency) Supplement and perform a confidence check of completed field topography and base map data of the area impacted by improvements. Determine if any changes to natural and cultural features, fences, buildings, and any other relevant features require further surveying. Any additional surveying of features will include the area from the right-of-way to the edge of the existing asphalt on both sides of the road. The data should also include the area on each intersecting street for a distance of 50 feet past the right-of-way line of SE Monroe Street.

- G. Verify horizontal locations of all utilities are tied. In instances where there may be a major conflict with utilities, verify vertical locations are tied as well.
- H. Update existing conditions drawing (base map) as necessary, using AutoCAD version 2019 or later. Upon completion of the existing conditions drawing, submit a three paper copies and an electronic copy to the Agency.
- I. Prepare a Centerline description for the entire length of the project.
- J. File a pre-construction record of survey with the County Surveyor as required by ORS 209.155.
- K. Prepare a separate Right-of-Way Impact Map for each parcel with a ROW or easement acquisition, identifying impacts to landscape vegetation and/or other improvements within permanent and temporary easement areas.
- L. Prepare legal descriptions (label Exhibit(s) A) and exhibit maps (label Exhibit(s) B) for permanent and temporary easements acquisitions.

Contractor Deliverables: Verified and updated topographic survey and base maps, including AutoCAD drawing files, showing all existing conditions; centerline description; pre-construction record of survey; Right-of-Way impact maps; easement legal descriptions and exhibits.

TASK 5: Environmental Reconnaissance and Permitting

The Agency will obtain Rights of Entry (ROE) for field reconnaissance work. The Contractor will provide list of properties requiring ROE's for research disciplines no less than five (5) weeks before such ROE's are required for work on private parcels. Contractor should verify any ROE map for concurrence on the appropriate properties.

The following tasks will be completed by the Contractor to identify issues and ensure compliance with the regulating agencies:

- A. Meet with the Agency and applicable environmental agencies to identify design and permitting requirements with respect to environmental regulations.
- B. Perform a natural resources reconnaissance and write a memo documenting existing conditions. For scoping, it is assumed that no wetland impacts are associated with the project
- C. Perform a Level 1 Hazardous Materials Corridor Study (HMCS) and provide draft and final memoranda. The purpose of the HMCS is to review the development history and current use of the properties adjacent to proposed roadway right-of-way and evaluate whether contaminant releases from these adjacent properties have been reported to regulatory agencies or may have occurred based on the current or known historical uses of the properties.

Contractor shall perform the Level 1 HMCS according to American Association of State Highway and Transportation Officials (AASHTO) criteria for a Corridor Study. The study shall generally conform to the scope and limitations of the American Society for Testing and Materials (ASTM) E 1527-13: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. Standard Practice E 1527-13 addresses the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and petroleum products.

Performance of a HMCS is intended to reduce but not eliminate uncertainty regarding the existence of environmental conditions within the Project corridor. The AASHTO practice is intended primarily to identify potential sources of contamination and hazardous materials that could impact the project. Based on the AASHTO guide, the HMCS constitutes appropriate inquiry into current and past uses of properties within the project corridor and is consistent with good commercial or customary practice.

Assumptions:

Contractor has permission to access the project corridor and all structures necessary to perform the aforementioned activities.

The Level One HMCS does not include an evaluation for the presence of lead-based paint, asbestos-containing materials, or other hazardous building materials that may be present within the Project corridors.

Site Reconnaissance

Contractor's qualified environmental professional shall conduct a reconnaissance of the project corridor to observe the property to the extent not obstructed by bodies of water, adjacent buildings, or other obstacles. The periphery of the project corridor shall be inspected while on site and from adjacent public thoroughfares.

Contractor shall inspect the project corridor for visual signs of contamination, presence of hazardous materials, and environmental problems. Contractor shall view adjacent parcels and existing uses shall be reviewed for potential environmental impacts. Contractor shall use color photographs to document the condition of the project corridor at the time of the inspection.

Historic Research

Contractor shall attempt to identify historic uses of the project corridor from the present to at least 1940. Contractor shall review one or more of the following standard historical sources, when the records are reasonably ascertainable. These sources include aerial photographs, fire insurance maps, property tax files, recorded land title records, United States Geologic Survey (USGS) topographic maps, city directories, building department records, zoning/land use records, and other historical sources.

Records Review

Contractor shall conduct a records search for the project corridor, which shall include a review of publicly available environmental records obtained from the US Environmental Protection Agency (EPA) and the Oregon Department of Environment Quality (DEQ). The following federal, state, and tribal lists shall be reviewed: National Priorities List (NPL); Comprehensive Environmental Recovery, Compensation, and Liability Information System (CERCLIS); Resource Conservation and Recovery Act (RCRA) Transport, Storage and Disposal (TSD); RCRA generators; Environmental Response Notification System (ERNS); Underground Storage Tank (UST); leaking UST; Hazardous Materials (HAZMAT); and landfill sites. Listed properties within the minimum search distances specified by E 1527-13 shall be identified. Contractor shall review the records and make conclusions based on the data.

In addition, Contractor shall contact County assessor and the environmental health, fire, building, and planning departments for pertinent environmental information pertaining to the project corridor. If necessary, Contractor shall review available files at the DEQ office in Salem, Oregon, for additional records pertaining to the project corridor and surrounding properties.

Physical Setting Review

Contractor shall obtain a current United States Geodetic Survey (USGS) topographic map and current aerial photographs of the project corridor. Contractor shall also review published information regarding soils, geology, and hydrogeology of the project corridor and region.

Task Deliverables/Schedule:

Draft Level 1 HMCS report within four (4) weeks of task notice to proceed.

Final Level 1 HMCS report within one (1) week of receipt of comments.

D. (Contingency) Perform a Clean Fill Evaluation of soil adjacent to the existing roadways within the Project Corridor. Previous soil sampling adjacent to Oregon roadways has indicated the presence of contaminants from roadway runoff at concentrations greater than Oregon Department of Environmental Quality (DEQ) Clean Fill Screening Levels (CFSLS) in the upper 1.5 feet of soil. Preliminary research indicated the presence of a nursery facility adjacent to SE Monroe Street. Pesticides and associated metals can accumulate in surface soil from routine pesticide applications on agricultural land, particularly in low lying areas like ditches. The Clean Fill Evaluation is intended to evaluate disposal options for soil that will require excavation and export during construction. The Clean Fill Evaluation will consist analyzing soil samples collected from areas where surface soils will be disturbed for project construction. The specific scope of work is summarized below.

- Coordinate and manage the field investigation, including public and private utility locates, permitting, and coordination as necessary to conduct explorations within the right-of-way.
- Contact the Oregon One-Call Utility Notification Center to clear the location of public utilities beneath the areas to be explored.
- Contractor shall collect surface soil samples from up to 10 locations.
- At each location, samples will be collected at approximately 3 feet and 10 feet from edge of pavement, depending on width of right-of-way acquisition. Soil samples shall be obtained from 0 to 0.5 feet and 1 to 1.5 feet below ground surface. Sample locations must be backfilled with excavation spoils; there must be no investigation derived waste (IDW). Equipment decontamination water can be disposed on-site.
- Contractor shall ship the samples to and ORELAP approved analytical laboratory where they will be composited into as many as 8 groups based on depth and distance from edge of pavement.
- The composite samples will be analyzed for NWTPH-Gx, NWTPH-Dx, Method 8270 SIM PAHs, Method 8151 herbicides, Method 8081 pesticides, Method 8082 PCBs, and total metals according to Methods 6020 and 7471A.
- Total metals analyses will include antimony, arsenic, barium, cadmium, chromium, copper, lead, selenium, silver, zinc, and mercury.
- Compare the analytical results to the appropriate Oregon Department of Environmental Quality DEQ CFSLS and summarize the results of the sampling activities in a report that will include recommendations for additional sampling and management and disposal of soil during construction.
- Report shall include field observations, photographs, description of sampling methods, laboratory reports and tables summarizing the analytical results.

Assumptions:

- Field activities will be completed in a one-day field effort.
- Soil samples will be analyzed on a standard (5- to 10-day) turnaround time.

Deliverables/Schedule:

- Draft Clean Fill Evaluation report within six (6) weeks of task notice to proceed.
- Final Clean Fill Evaluation report within two (2) weeks of receipt of comments.

E. (Contingency) Depending on the findings of the Level 1 Assessment, a Level 2 Assessment may be required. This will be included as a contingency task. Contractor shall collect subsurface soil and groundwater samples in the project corridor and/or on adjacent private property(ies). Soil and groundwater samples shall be collected for contaminant analysis and the results presented in a Level 2 Assessment report. The report

shall discuss soil and groundwater sample methods, laboratory analytical results, and conclusions regarding the presence or absence of subsurface contamination.

The specific scope of work is summarized below.

Contractor shall:

- Prepare a work plan to address the site-specific issues identified in the HMCS. The work plan shall describe the number and type of borings, sample collection, sampling equipment, equipment decontamination, and sample analysis requirements.
- Prepare a Health and Safety Plan in accordance with 29 CFR 1910.120 and OAR 437-02-100 et seq., and other appropriate state and Federal worker health and safety regulations. The HASP must reflect the sampling and characterization activities described in the Work Plan. The HASP should cover the activities of all Contractor, sub-Contractor, and Agency employees. The HASP must include a traffic control plan, if needed.
- Coordinate and manage the field investigation, including public and private utility locates, permitting, and coordination as necessary to conduct explorations within the right-of-way.
- Contact the Oregon One-Call Utility Notification Center to clear the location of public utilities beneath the areas to be explored.
- Subcontract a traffic control provider to develop a traffic control plan and provide traffic control during drilling operations, as needed.
- Conduct geophysical surveys using magnetic survey and ground penetrating radar to determine if underground storage tanks or metallic debris are present, as needed
- Following sampling, properly abandon the boreholes by backfilling in accordance to Oregon Water Resources Department regulations immediately following sample collection and repair the surface, as appropriate.
- Compare the analytical results to the appropriate DEQ CFSLs and risk-based concentrations for construction and excavation workers and summarize the results of the sampling activities in a report.
- Make recommendations for additional sampling and management and disposal of soil and groundwater during construction.

Assumptions:

- Field activities will be completed in a two-day field effort.
 - Soil samples will be analyzed on a standard (5- to 10-day) turnaround time.

Deliverables/Schedule:

- Draft report within six (6) weeks of task notice to proceed.
- Final report within two (2) weeks of receipt of comments.

Contractor Deliverables: Level One Hazardous Materials Corridor Assessment; Level Two Hazardous Materials Corridor Assessment (contingency deliverable)

- F. Perform a site reconnaissance of the project area to identify the potential presence of cultural resources or historic resources.
- G. Prepare a draft and final technical memorandum complete with maps to summarize the reconnaissance findings.
- H. Develop a list of all potential environmental permits required (including County permits) and the applicable agencies, and coordination needed based on the environmental reconnaissance findings. In collaboration with the Agency, consult and coordinate with all applicable environmental agencies to further refine the permitting strategy. Prepare a complete list of all permits necessary for submittal by the Agency. All work and

recommendations to be accomplished under this solicitation must conform to all appropriate federal, state, and local laws and regulations.

- I. Provide assistance to Agency in responding to questions from environmental agencies.
- J. Assist the Agency in preparing applications and obtaining all required Local, State, and Federal environmental permits.

Contractor Deliverables: Meeting summaries; natural resources memo; cultural resources memo; Level One Hazardous Materials Corridor Assessment; Level Two Hazardous Materials Corridor Assessment (contingency task).

TASK 6: Preliminary Engineering

The Contractor will:

- A. Perform preliminary storm drainage analysis that includes detention and water quality of runoff from new impervious surfaces and redirection of flows from new curbs or slope changes, in relation to the existing storm system in the Monroe project area. Contractor will coordinate with Clackamas County Service District No. 1 on the proposed design. Identify options necessary to meet Clackamas County Surface Runoff standards for water quality and quantity. This task will include preliminary and final drainage reports.
- B. Conduct a geotechnical evaluation within the project corridor for design elements related to pavement preservation, pavement widening and infiltration characteristics. We propose to provide Geotechnical Engineering scope of services as follows:
 - 1. Review as-built information within the project area if available from the Agency.
 - 2. Identify field exploration locations based on discussion and information from the project team and present the exploration locations to the Agency.
 - 3. Obtain one-call utility locates for explorations and obtain permits through the Agency.
 - 4. Provide traffic control during field explorations through our subcontractor.
 - 5. Complete up to 16 solid stem auger borings to depths of up to 5 feet below ground surface for use in pavement design and utility trench subsurface characterization. Obtain samples at 2.5- to 5-foot intervals.
 - 6. Complete hollow-stem auger borings to depths of up to 20 feet below ground surface for use in UIC infiltration testing.
 - a. Up to four (4) test locations.
 - b. Locations and depths for infiltration testing to be provided by the project team. Test locations will also depend on right-of-way limits, utilities, and accessibility.
 - c. Obtain soil samples at 2.5- to 5-foot intervals.
 - d. Complete infiltration testing in the explorations at depths from to 10 to 15 feet below ground surface.
 - 7. Conduct falling weight deflectometer (FWD) testing at 100-foot intervals within the project limits. FWD tests in the adjacent lane will be offset.
 - 8. Conduct the following laboratory testing using soil samples obtained from the explorations:
 - a. Up to 20 moisture content tests in general conformance with the American Society for Testing and Materials (ASTM) D 2216.
 - b. Up to one Atterberg limits tests in general conformance with ASTM D 4318, if soil conditions warrant.
 - c. Up to four tests for material passing the U.S. No. 200 sieve in general conformance to ASTM D 1140.

- d. Up to four tests for soil gradation in general conformance to ASTM D 422 for use in infiltration calculations.
9. Provide the results of our infiltration testing.
10. Provide construction recommendations for site preparation, structural fill compaction criteria, and we/dry weather earthwork procedures.
11. Back-calculate FWD results to determine the effective pavement structural capacity and subgrade resilient modulus.
12. Calculate pavement design loads based on traffic classification data to be provided by the design team.
13. Provide pavement rehabilitation and widening design recommendations for construction.
14. Provide the results of our infiltration testing.
15. Project management including attendance at a project kick-off meetings and discussions with the design team and Clackamas County.
16. Provide a draft geotechnical report summarizing the results of our investigation and recommendations.
17. Finalize the draft report after incorporation review comments from the Agency and the design team.

Assumptions:

- Environmental permitting shall not be required for the field work.
- The drill cuttings are not contaminated and may be disposed of off-site by our drilling subcontractor. If the drill cuttings appear to be contaminated, the Agency shall be informed immediately, and GeoDesign shall take necessary action upon authorization.
- Flagging and traffic control for drilling shall be subcontracted.
- All fees associated with Right of Entry's and permits shall be provided by the Agency.

Contractor Deliverables: Draft and final geotechnical design reports.

- C. Coordinate with the Agency to determine roadway geometrics, alignments, profiles, and cross-sections meeting AASHTO (American Association of State Highway and Transportation Officials) and County standards. Provide up to two alternative roadway horizontal and vertical profile designs to the Agency in strip maps with preliminary cross-sections and profiles.
- D. Provide preliminary cost estimates for proposed alternatives.
- E. Coordinate with Agency to determine appropriate retaining wall structures (type, size, and location), if needed. At least two retaining wall types should be considered in the TS&L phase.
- F. Submit Draft preliminary (30%) strip map plans showing the new sidewalks or pathways, limits of any retaining walls and other major improvement features using information from the topographic survey, Stormwater Report and Geotechnical Report. Plans should be generated at a horizontal scale of 1" = 20'.
- G. Provide a draft and final Design Acceptance Package (DAP) memo to the Agency summarizing the alternatives considered and recommended improvements. Include the plans and all draft and final reports including environmental, stormwater and geotechnical reports in the DAP.
- H. Prepare traffic analysis memorandum to determine recommended lane configurations for Monroe Street/72nd Avenue intersection. Review available traffic information at study area these intersections and projected volumes to determine impacts to intersection operations resulting from proposed improvements and identify needed modifications.

Review cross section along Monroe to assess cross-section, multimodal needs, and transition points. Perform peak period traffic counts at up to four locations to assess midblock pedestrian needs per NCHRP 562 guidance.

Deliverables: Design base map per County standards; geotechnical report; storm water analysis hydraulic reports; detailed cost estimates; layouts for two alternative designs; TS&L memo for retaining walls, as necessary; draft and final DAP memos; strip maps with preliminary cross sections and profiles; monthly engineering schedule updates.

Task 7: Right-of-Way Research, Descriptions, Appraisals, and Acquisitions

The Contractor will provide title research, maps, legal documents, appraisals, negotiations, and acquisition and relocation services. It is assumed that there are 10 acquisition files and 67 minimum payment files for driveway reconnections.

The Contractor will:

- A. Identify if proposed road improvements require partial or full acquisitions of fee parcels or acquisition of rights-of-way and/or easements only.
- B. Verify all existing easements within the impact areas and the beneficiaries of those easements for efficacy of project use as shown on the base map.
- C. Develop right-of-way and/or easement cost estimates. If the proposed improvements necessitate right-of-way and/or easement acquisitions, estimate the total cost of acquisitions. Cost estimates shall not be broken down or identified by individual properties, but only by total cost for respective alternatives. Preliminary title reports will be obtained under survey tasks. Contractor will alert the Project Manager of any title related concerns.
- D. If necessary, Contractor will produce up to 10 real estate appraisals in accordance with the ODOT Right-of-Way Manual and the URA for each parcel identified for which a property interest is to be acquired. Contractor will provide the Agency with two copies of each real estate appraisal. The Contractor should be aware that all appraisals shall undergo an independent appraisal review and that the Contractor will need to take corrective actions necessary to provide the Agency with recommendations for establishment of just compensation.
- E. Contractor will conduct Right of Way negotiations and acquisitions in conformance with current state and federal regulations and the Federal Uniform Relocation Act (URA).
Under no circumstances shall the Contractor take coercive action to induce an agreement on the price paid to the property owner. If negotiations do not result in an agreement, the Contractor is to submit a “recommendation for condemnation” packet to the Agency for further action. Develop a Right-of-Way Status Report and update and submit such to the Agency on a bi-weekly basis.
- F. Coordinate with the Agency to conduct all public and/or landowner inquiries about the project with the understanding that no design or location decisions have been made and that potential impacts to properties covered by alternatives are unknown at this time.

Contractor Assumptions:

- Assumes up to 10 ROW files and 67 Minimum Payment Offer files
- Assumes 10 taking and damages appraisals & 10 appraisal reviews

- Contractor to provide title reports for all files.
- There is no relocation.
- Rights of Entry are not needed for this project.
- It is assumed that the minimum payment offers will be accepted. If these voluntary offers are rejected, additional scope and fee will be added for the conversion to a standard acquisition file.
- The Agency will draft a resolution of necessity.
- Condemnation support is not a part of this scope.
- Escrow services and title insurance if needed will be paid for by the Agency.
- The Agency will make payment to property owners and record documents if needed.
- Contractor will be provided with legal descriptions and drawings.
- Rates subject to annual escalation.

Contractor Deliverables: Right-of-way cost estimates; right-of-way base map; right-of-way impact maps; legal descriptions and exhibit maps; appraisals; negotiated files; and right-of-way status reports.

Task 7 (CONTINGENCY): Right-of-Way Research, Descriptions, Appraisals, and Acquisitions (Contingency Task)

The Contractor will provide title research, maps, legal documents, appraisals, negotiations, and acquisition and relocation services. It is assumed that there are 10 acquisition files and 45 minimum payment files for driveway reconnections for the contingency work. The Subtasks will be the same as outlined in Task 7 above.

Contractor Deliverables: Right-of-way cost estimates; right-of-way base map; right-of-way impact maps; legal descriptions and exhibit maps; appraisals; negotiated files; and right-of-way status reports.

TASK 8: Final Design Plans, Specifications, Estimates and Bid Assistance

The Contractor will advance the recommended alternative from the TS&L stage (30% design) to the 100% complete stage. Contractor shall complete the following:

- A. Conduct strategy work sessions both in person and on the telephone to keep the project team informed about issues, decisions, and impacts.
- B. Incorporate comments from the 30% and 60% design submittal in order to generate further refinement of the plans. This may include more detailed retaining wall sections, surface water collection, transfer or treatment, driveway connections, signing and striping plans, flashers/signals, ITS devices and intersection ADA access ramps and details.
- C. Conduct 60% and 90% design work sessions with Agency staff.
- D. Complete engineering drawings for submittal to the Agency at 60%, 90%, and 100% milestones, and perform quality assurance and in-house independent design checks and plan review of all drawings and related quantities. All plans will be drafted with AutoCAD software, version 2019 or later, and the final CAD drawings provided through a FTP site or on a CD.
 - Provide lighting analysis along Monroe Street at public intersections and pedestrian crossings. Analysis will consider the use of existing wood utility poles to the extent possible. Contractor to coordinate with PGE. Roadway illumination plans will be prepared per Clackamas County and PGE standards showing all underground infrastructure (light pole foundations, junction boxes, conduit) for the new aluminum light poles where needed to supplement fixtures

on utility poles. PGE will be responsible for setting the poles, installing the luminaires and wiring, and energizing the lighting system. New aluminum poles will be energized via underground conduit. New street lighting system will conform to PGE option A requirements. The following plans will be prepared:

- Illumination legend – 1 sheet
 - Illumination plans – 12 sheets (1:40 scale)
 - Illumination details – 2 sheets
- Contractor shall perform the design work for this Task through guidance provided by the current edition of the Clackamas County Roadway Standards, ODOT Traffic Sign Design Manual, the MUTCD and Oregon Supplements to the MUTCD (OAR 734-020-005) and with the Sign Policy and Guidelines for the State Highway System. Sign Plans shall include, but are not limited to the following: permanent signing plan, signing details, and sign post and data table. Contractor shall prepare striping plan with guidance provided by the Clackamas County Roadway Standards, ODOT Traffic Line Manual, ODOT Traffic Manual, the MUTCD, the Oregon Supplement to the MUTCD, the Oregon Standard Drawings, and Standard Details. Permanent Striping Plans shall include but are not limited to roadway alignment, stationing, channelization information, tapers, centerlines, lane lines, shoulder width information, and dimensions. It is anticipated that minor cross street approaches will require minor signing and striping modifications near the intersections. The following plans will be prepared.
 - Signing/Striping Legend – 1 sheet
 - Signing/Striping Plans – 12 sheets (1:40 scale)
 - Sign installation details – 4 sheets
 - Striping details – 1 sheet
 - Prepare typical Traffic Control Plan details to describe how the existing roadway area is divided up between live traffic and the construction site. Typical plan sheets will identify the type, quantity and location for temporary traffic control devices. The TCP typical details shall address all modes of transportation, including bicycles and pedestrians. Contractor shall prepare the TCP in accordance with the ODOT Traffic Control Plans Design Manual, applicable ODOT Standard Drawings, Standard Specifications, and the MUTCD. Agency will provide lane closure restrictions along Monroe Street. The following plans will be prepared:
 - Advance area signage plan – 1 sheet
 - Traffic control plan details – 6 sheets (1:40 scale)
 - Staging Plans – 2 sheets
- E.** Provide relevant plan drawings that include at a minimum title, summary, typical sections, erosion control plans, retaining wall design, storm water plans, illumination plans, landscaping plans, construction staging, temporary protection and direction of traffic, restoration plans, signing and pavement marking, right-of-way design plan, planting plans, standard details, and other required drawings for submittal to Agency for review. Title sheet shall include location sketch, title of project, length of project limits, plan sheet index, applicable Oregon Standard Drawings, and a provision for approving official signature date and scale.
- F.** Calculate quantities and develop an engineer's construction cost estimate and construction schedule for submittal at each plan development milestone (60%, 90%, 100%).
- G.** Prepare relevant sections of specifications based on the 2018 Oregon Standard Specifications for Construction. Produce special provisions for the project using standard

ODOT boilerplate special provisions and County boilerplate special provisions to the specifications in Part 00100 – General Requirements.

- H. Revise and submit final Special Provisions based on comments received during Agency reviews.
- I. Provide word processing of the final Special Provisions.
- J. Make corrections as required by Agency and submit final plans to Agency (both documents and electronic copies).
- K. Provide bidding assistance, including responding to questions from potential construction contractors and suppliers to the Agency about the Plans and Specifications during the bidding process, and completion of any addendums necessary to clarify the documents.
- L. Coordinate with utilities for any required relocations. Send preliminary and final plans to each affected utility, along with notification letters. Include utility relocation status and schedule with monthly progress report and schedule update. Provide a final notice and status update to all utilities prior to bid.

Contractor Deliverables: 60%, 90%, and 100% Engineering Drawings (plan size to be coordinated with Agency), 90% and 100% Specifications and Bid Schedule, documentation of 60% and 90% review comments, Engineer’s Estimate, final technical reports, changes to documents for Addenda (up to three), if any.

It is assumed for the purpose of developing this proposal that a pre-bid meeting will not be conducted. An allowance for three (3) bid addenda is to be provided.

NOTE: Construction management services are not included as part of this RFP and will not be included in the Contractor contract for this project. The Agency may, at its discretion, decide to hire the Contractor for these services under a separate, future contract.

TASK 9: Construction Services

These services are to be provided by the Contractor as part of the design engineering scope of work. These services are not considered part of construction engineering (a.k.a. construction management).

- A. Pre-construction conference – The Contractor will attend the pre- construction conference to define responsibility, standards, special items of interest to the project, traffic control, maintaining access, communications, and scheduling.
- B. Construction Assistance – The Contractor will work directly with the Agency’s construction management during construction. The Contractor will visit the project site at least two times per week, interpret the plans and specifications and respond to questions, review shop drawing submittals within 7 calendar days of receipt, assist with field design changes and review change orders. The Contractor will also attend meetings with Agency project managers as required to review construction progress, coordinate with utilities as required, and attend the final inspection. The Contractor shall provide a punch list to the Agency construction management team.
- C. Construction Surveying and Checks – The Contractor will set vertical and horizontal controls for construction staking and be available for verification of contractor staking. Construction staking will be the responsibility of the contractor.

- D. Project Closeout – After construction is complete, the final inspection complete, and the project accepted by the Agency, the Contractor will modify the plans and profiles to reflect any changes made during construction, with input from Agency construction management. A set of reproducible mylar as-constructed plans and the associated AutoDesk drawing files are to be provided to the Agency.

Deliverables: Vertical and horizontal control to be available at pre-construction conference (in field and in electronic format); shop drawing review comments; final inspection/project concurrence letter; one set of reproducible mylar as-constructed plans and the associated AutoDesk drawing files; monthly engineering schedule updates.

**EXHIBIT B
FEE SCHEDULE**



December 10, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Local Grant Agreement between Clackamas County and Micro Enterprise Services of Oregon (MESO) for MESO to provide a small grants program on behalf of Clackamas County in an effort to support the local business and childcare provider community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve a Local Grant Agreement between Clackamas County and MESO for MESO to provide assistance to the Clackamas County small business and childcare provider community by providing \$1,000,000 in small grants to small businesses and childcare providers (25 employees or under) in Clackamas County impacted by COVID-19. Up to \$500,000 is dedicated for childcare providers.
Dollar Amount and Fiscal Impact	\$1,100,000 of CARES Act dollars for Clackamas County Business and Community Services (BCS) to provide \$1,100,000 to MESO to fund a \$1,000,000 grant program and the required \$100,000 administrative fee.
Funding Source	CARES Act via the Clackamas County Emergency Operations Center
Duration	October 1, 2020 through December 30, 2020
Previous Board Action	Information on this program has been shared via the EOC Commander Nancy Bush, as well as during monthly Economic Development updates to the BCC.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This grant agreement supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing much needed cash to business impacted by COVID-19 will help them make it through the pandemic so they can reopen under the new normal, and eventually expand when economic times improve. 2) This grant agreement supports County strategic priority of Growing a Vibrant Economy by providing much needed assistance to Clackamas County small businesses so they can remain in business throughout the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: November 23, 2020 Counsel Initials: KR
Procurement Review	Was the item processed through procurement? N/A
Contact Person	Laura Zentner, BCS Director (503) 742-4351 Sarah Eckman, BCS – Deputy Director (503) 894-3135
Contract No.	N/A

BACKGROUND:

Earlier this year, Business and Community Services developed a program with MESO to provide economic and social assistance to those Clackamas County businesses affected by COVID-19. The program helps vulnerable businesses impacted by COVID-19 by providing much needed cash, as well as technical support to develop new talents and skills that make them more marketable.

We are now entering into a new agreement with MESO for them to facilitate a grant application and award process, distributing \$1,000,000 in grants to Clackamas County businesses and childcare providers. Up to 50% (\$500,000) of the dollars are dedicated to childcare providers. Businesses may

apply for up to \$5,000 per award and childcare providers may apply for up to \$9,999 per award. Eligibility criteria are listed in Exhibit A of the local grant agreement.

Childcare providers are among the hardest-hit and least supported industries during the COVID-19 pandemic. The Clackamas Workforce Partnership has continued to ask for support and has emphasized the critical need in this County for our childcare providers.

We have over 225 childcare businesses that are struggling to balance the cost of providing quality, developmentally appropriate care with the limited revenues available to get them through the forced periods of closure. Many have decreased enrollment and increased instability due to the ongoing impacts of the virus. Our grant aims to help them transition and be sustainable during these times.

Additionally, our Chambers of Commerce and other partners have communicated to us that the greatest need for businesses right now is cash.

RECOMMENDATION:

Staff respectfully recommends the BCC approve the grant agreement with MESO.

ATTACHMENT:

Local Grant Agreement between Clackamas County and Micro Enterprise Services of Oregon (MESO)

Respectfully submitted,

A handwritten signature in cursive script that reads "Laura Zentner".

Laura Zentner, CPA
Director, Business & Community Services

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 21-011**

Project Name: **CARES Small Business/Childcare Relief Funding**
Project Number:

This Agreement is between **Clackamas County** (“COUNTY”), a political subdivision of the State of Oregon, acting by and through its Business and Community Services Department, and **Micro Enterprise Solutions of Oregon** (“SUBRECIPIENT”), An Oregon Nonprofit Corporation.

Clackamas County Data

Grant Accountant: Michael Morasko	Program Manager: Sarah Eckman
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 503-742-5435 mmorasko@clackamas.us	Clackamas County 150 Beaver creek Road Oregon City, OR 97045 503-894-3135 sarahste@clackamas.us

Subrecipient Data

Finance/Fiscal Representative: David Wilcox	Program Representative: Nita Shah
Micro Enterprise Solutions of Oregon 4800 NE MLK Jr. Blvd. Portland, OR 97212 971-344-6805 dwilcox@mesopdx.org	Micro Enterprise Solutions of Oregon 4800 NE MLK Jr. Blvd. Portland, OR 97212 503-841-3351 nshah@mesopdx.org
DUNS: 009646203	

RECITALS

1. Micro Enterprise Solutions of Oregon (“SUBRECIPIENT”) has over 12 years helping small-scale entrepreneurs succeed. SUBRECIPIENT’s staff has technical expertise in all areas of micro-enterprise development and small business growth. SUBRECIPIENT emphasizes development of a core business foundation and implementation of strategies focused on financial management, basic and advanced business planning, marketing, customer service and effective operations. Services are based on proven models that are shaped for the local community and individual entrepreneurs.
2. Clackamas County (“COUNTY”) desires to have its residents benefit from business recovery payments provided through the State of Oregon and its Department of Administrative Services (“DAS”) passed through the U.S. Treasury Department under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

3. Project description: SUBRECIPIENT will provide business recovery payments to qualifying businesses and childcare providers resulting from the coronavirus pandemic.
4. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement (this “Agreement”) the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used for expenses approved in writing by County relating to the project incurred no earlier than **October 1, 2020** and not later than **December 30, 2020**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Scope of Work. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement and according to SUBRECIPIENT scope of work in Exhibit A.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations, including the CARES Act and P.L. 116-136. Furthermore, SUBRECIPIENT shall comply with the requirements of the OHCS award number 5084 and all accompanying amendments that is the source of the grant funding, which is incorporated herein by reference. SUBRECIPIENT shall further comply with any requirements, terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **Grant Funds.** The maximum, not to exceed, grant amount COUNTY will pay is **\$1,100,000.00**. Grant funds will be issued in two advances and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Payment Request and Exhibit E: Weekly / Final Performance Report. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding on this award is sourced as follows:
 - 4.1. **CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019)** issued to COUNTY by DAS and the U.S. Department of the Treasury (Federal Award Identification #]: Unavailable): **\$1,000,000**
 - 4.2. **COUNTY local dollars** reserved for the purposes outlined herein: **\$100,000**
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed

by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
- a. Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement, or;
 - b. Mutual agreement by COUNTY and SUBRECIPIENT.
 - c. Written notice provided by COUNTY that OHCS has determined funds are no longer available for this purpose.
 - d. Written notice provided by COUNTY that it lacks sufficient funds, as determined by COUNTY in its sole discretion, to continue to perform under this Agreement.

Upon completion of recovery payment distribution or upon termination of this Agreement, any unexpended balances of CARES funds shall remain with COUNTY.

7. **Effect of Termination.** The expiration or termination of this Agreement, for any reason, shall not release SUBRECIPIENT from any obligation or liability to COUNTY, or any requirement or obligation that:
- a. Has already accrued hereunder;
 - b. Comes into effect due to the expiration or termination of the Agreement; or
 - c. Otherwise survives the expiration or termination of this Agreement.

Following the termination of this Agreement, SUBRECIPIENT shall promptly identify all unexpended funds and return all unexpended funds to COUNTY. Unexpended funds are those funds received by SUBRECIPIENT under this Agreement that (i) have not been spent or expended in accordance with the terms of this Agreement; and (ii) are not required to pay allowable costs or expenses that will become due and payable as a result of the termination of this Agreement.

8. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
10. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
- a) **Financial Management.** SUBRECIPIENT shall comply with the following federal requirements:

1. 2 CFR 200.303 – Internal Controls
 2. 2 CFR 200.330 through 200.332 – Subrecipient Monitoring and Management
 3. 2 CFR 200 Subpart F – Audit Requirements
- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or “deferred” until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are “earned.” All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to COUNTY within 15 days.
- c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
- d) **Cost Principles.** This award is excluded from 2 CFR 200 Subpart E – Cost Principles by statute. Funds may be used only in accordance with and for the purposes outlined in Exhibit A (SUBRECIPIENT Scope of Work) and Attachment 1 (Coronavirus Relief Fund Frequently Asked Questions [updated frequently]).
- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Indirect Cost Recovery.** Indirect cost recovery is statutorily unavailable on this award. Administrative funding on this award will be provided with COUNTY local funds as outlined in Exhibit B: SUBRECIPIENT Budget.
- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement, if applicable. Payment shall be made according to the schedule in Exhibit D: Required Financial Reporting and Payment Schedule. All funds advanced to SUBRECIPIENT and not obligated by 12/30/20 shall be returned to COUNTY by January 15, 2021.

- k) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (weekly) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Payment Request on a biweekly basis.
- m) **Specific Conditions.** SUBRECIPIENT shall provide a general ledger printout of all program recipient payments with each weekly program report.
- n) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits D & F), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement.
- o) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, located at <http://www.sam.gov>.
- p) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (“FAC”) within 9 months from SUBRECIPIENT’s fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://facweb.census.gov/>. At the time of submission to the FAC, SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT’s fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- q) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, 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 SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY’s discretion. Depending on the outcomes of the

financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

- r) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of five (5) years, or such longer period as may be required by the Federal agency or applicable state 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, according to 2 CFR 200.333-337.
- s) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications in Exhibit G: Federal Terms and Conditions and all accompanying amendments, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- t) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, require repayment of any funds used by SUBRECIPIENT in violation of this Agreement, to terminate this Agreement, and to pursue any right or remedy available to COUNTY at law, in equity, or under this Agreement.

11. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants,

Contracts and Cooperative Agreements," and any further implementing regulations issued by the U.S. Treasury Department.

- c) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
 - Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
 - Procure a commercial sex act during the period of time the award is in effect; or
 - Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.

- 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.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be 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).
 - 3) **Excess/Umbrella Insurance.** A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.
 - 4) **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). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
 - 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "the State of Oregon, its officers, employees and agents and Clackamas County, its agents, elected officials, officers, and employees" as additional insureds.

- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.
 - 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
 - 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The State of Oregon, its officers, employees and agents and Clackamas County, its agents, elected officials, officers, and employees must be named as an additional insured on the Certificate of Insurance. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
 - 9) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
 - 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
 - 11) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement. SUBRECIPIENT shall obtain any endorsement that may be necessary to affect this waiver of subrogation.
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
 - e) **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
 - f) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or

commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.

- g) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- h) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- i) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- j) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.
- m) **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.
- n) **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.

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

CLACKAMAS COUNTY

MICRO ENTERPRISE SOLUTIONS OF OREGON

Commissioner: Jim Bernard, Chair
Commissioner: Sonya Fischer
Commissioner: Ken Humbertson
Commissioner: Paul Savas
Commissioner: Martha Schrader

Signing on Behalf of the Board,

By: _____
Jim Bernard, Chair

By:  _____
Nita Shah, Executive Director

Dated: _____

Dated: 11 / 30 / 2020

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: _____
County Counsel

Dated: _____

- Exhibit A: SUBRECIPIENT Scope of Work
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Payment Request
- Exhibit E: Weekly/Final Performance Report
- Exhibit F: Final Financial Report
- Exhibit G: Federal Terms and Conditions
- Attachment 1: Coronavirus Relief Fund Frequently Asked Questions

Clackamas County – Small Business Relief Funding
Exhibit A: SUBRECIPIENT Scope of Work
Part A: Small Business & Part B: Childcare Providers

Clackamas County – Small Business Relief Funding
Exhibit A: SUBRECIPIENT Scope of Work
Part A: Small Business & Part B: Childcare Providers

Strategic Goals

Part A: Small Business

1. Ensure funds are managed and used in accordance with all federal requirements
2. Ensure that business owners from historically disadvantaged populations have equitable access
3. Prioritize businesses that have not received city, county, state or federal assistance

Part B: Childcare Providers

1. Ensure funds are managed and used in accordance with all federal requirements
2. Prioritize childcare providers that have not received city, county, state or federal assistance
3. Up to \$500,000 of grant funds will be dedicated for childcare providers. Unsubscribed funds dedicated for childcare providers will be redirected for distribution to small business applicants.
4. Given limited funding at this time, the focus of this proposal is to preserve the current licensed and supply of childcare. Childcare in the Clackamas County is essential to economic recovery and sustainability during and after COVID-19.
5. Ensure providers from and serving representing underserved populations have equitable access to funding including application assistance in preferred language.
6. Provide economic relief to childcare providers with small operating capacities and budgets. These providers not only serve but also represent a sector of low-income workers.
7. Protect the role of childcare providers as a valuable resource for underserved families.
8. Maintain and preserve the health and public safety of children and families seeking care and the childcare workforce; through investment to adhere to OHA COVID-19 enhanced health and safety regulations.

SUBRECIPIENT Deliverables – Parts A & B

1. SUBRECIPIENT will create a new web-based application form substantially similar to previous Clackamas County Small Business Relief Funding grant application periods.
2. SUBRECIPIENT will include in the application, any questions necessary for the selection process, grant award amount (not to exceed \$9,999.00) and voluntarily provided demographic (**REAL D race/ethnicity, preferred language spoken, gender**) information on the applicants.
3. After applications have closed, SUBRECIPIENT will refine the applications per the instructions in this document and provide relevant statistics for the final list of eligible applications using appropriate data points and for any data requested by COUNTY.
4. SUBRECIPIENT will apply the selection process described in this document and provide a list of tentative grant finalists to COUNTY, along with statistics on the ownership demographics, location, industry type, and employee counts, and any other data points requested by COUNTY, for the list of tentative finalists.
5. Once COUNTY has reviewed this information and approved processing of the grants, SUBRECIPIENT will begin its due diligence in verifying the finalists' relevant information and process grants for all eligible finalists.
 - a. If SUBRECIPIENT discovers information that creates a reasonable suspicion that the finalist is not eligible, is deemed ineligible for other appropriate reasons, or has been deceptive, SUBRECIPIENT will notify COUNTY, share the information it has discovered and provide a recommendation on action. COUNTY will make all final decisions on whether to award a grant to a finalist about which SUBRECIPIENT has raised concerns.
6. Once due diligence is complete and COUNTY approves list, SUBRECIPIENT will issue award letters and disperse funds to applicants.
7. SUBRECIPIENT will report to COUNTY as outlined in Exhibit A.

Marketing and Outreach – Parts A & B

COUNTY will work in conjunction with SUBRECIPIENT to provide outreach and engage potential applicants through a variety of mechanisms:

- COUNTY webpage posting announcing opportunity and allowing applicants to provide their contact information for follow-up
- Announcement of open application period via:
 - Both Clackamas County and SUBRECIPIENT websites
 - Clackamas County Social Media Accounts
 - COUNTY networks known coordinated partners such as Business and Community Services and the Emergency Operations Center
 - Open application period via known existing child care provider lists and connection points such as: Child Care Resource and Referral Team, Early Learning Division records, and Community Based

Organizations

- Applicants will be supported through the application process via SUBRECIPIENT staff, Child Care Resource and Referral staff and Clackamas County Small Business Recovery Centers

Max award per qualified applicant

Part A: Small Business - \$5,000.00

Part B: Childcare Providers - \$9,999.00 per licensed (or licensed exempt) site

Eligibility Criteria – Part A: Small Business

In order to qualify for a grant a business must:

1. Be physically located in Clackamas County
2. Be an individually owned franchise if part of a chain
3. Have either been closed by the “Stay Home, Save Lives” Executive Order or have lost at least 30% of revenue in any month since March 2020 compared to the previous month or compared to the same month in 2019
NOTE: Applicants will be required to submit documentation to verify their revenue loss
4. Have not had more than 25 full-time employees at any one time in the last 12 months
5. Have been in operation for one year or more, prior to March 1, 2020
6. Not be a passive real estate holding company or other entity holding a passive investment in a small business but with no operational ties to that business
7. Had no more than \$5M in gross revenue in 2019
8. Was current on all federal, state and local taxes as of December 30, 2019
9. Be in compliance with all federal, state and local laws and regulations (marijuana-related businesses are not eligible due to federal status)
10. Not be an adult-oriented business or derive a majority of income from gambling activities
11. Be registered with the state or be exempted from the requirement to register with the state
12. Grant award proceeds may not be used for expenses already covered with other local, state or federal award proceeds.

Eligibility Criteria – Part B: Childcare Providers

In order to become eligible for Childcare Assistance Grant funds an Applicant must:

- 1) Must be physically located in Clackamas County
- 2) Must have held an active license until March 23rd, 2020 (Issue date of Governor’s Exec. Order 20-12), or;

- 3) has been listed with Department of Human Services for from June 2019 to June 2020 per DHS provided listings, or;
- 4) can provide proof they have been listed with the Department of Human Services
- 5) Have been in operation for one year or more, and have at least one eligible employee/owner/operator on or before March, 23rd 2020
- 6) Must be licensed or registered or designated as exempt by the Office of Child Care, in good standing
- 7) Was current on all federal, state and local taxes as of December 30, 2019
- 8) Be in compliance with all federal, state and local laws and regulations (marijuana-related business are not eligible due to federal status)
- 9) Applicant must certify the financial impact of COVID 19 meets or exceeds the grant award amount for which they are applying.
- 10) Grant award proceeds may not be used for expenses already covered with other local, state or federal award proceeds.
- 11) Multiple location providers that can provide eligible, unduplicated expenses for each site.

Eligible Expenditures – Parts A & B

1. Any business-related operating expenses not covered by any other assistance programs (including but not limited to payroll, rent/mortgage, utilities, perishable inventory losses due to required closures, payments to suppliers, costs associated with reopening, PPE and cleaning supplies).

Application Process – Parts A & B

Applications will open on November 25, 2020 and close December 5, 2020.

Only one application will be accepted for any one business *owner*. A business owner may apply on behalf of any business in which they have any ownership stake but may not apply on behalf of a second or any subsequent business. If that same person owns less than 51% of another business, that second business may apply under another owner's name.

Selection Process – Part A: Small Business Relief

Once the application window has closed, the complete list of all initial applications will be refined by MESO to remove any that appear ineligible, are duplicates, or are multiple applications from the same owner. For those owners found to have submitted multiple applications, only the first application received from that owner will be considered.

Scores will be automatically calculated by the system created through a collaboration of the

County and MESO using the responses provided in the applications and the scoring system described below. The tentative grant recipient selections will be made by going down the list of applications, sorted from highest to lowest score, until all slots have been filled. If a situation arises in which there are fewer slots left than businesses with the same score that would make them eligible for the spot(s), a lottery using a random-number generator and the relevant row numbers on the Excel sheet used for managing applications will be used to select the finalists for the remaining slot(s).

If a tentative grant recipient drops out for any reason, MESO will select a new recipient by going down the score-prioritized list to the next business on the list and use the lottery described above if there are multiple businesses with that same score.

MESO will verify the following application information for each final grant recipient business before processing that business's grant:

1. Gross revenue for 2019 and revenue loss claimed on application
2. Years of operation
3. Industry
4. Number of full-time equivalent employees
5. Primary business owner's sources of income if business is claimed as primary source
6. Primary business owner's income level on MFI scale if claiming below 80% of MFI

Selection Process – Part B: Childcare Providers

Once the application window has closed, the complete list of all initial applications will be refined by MESO to remove any that appear ineligible, are duplicates. An owner/operator may apply on behalf of multiple sites so long as the sites are individually licensed.

Scores will be automatically calculated by the system created through a collaboration of the Clackamas County and MESO using the responses provided in the applications and the scoring system described below. The tentative grant recipient selections will be made by going down the list of applications, sorted from highest to lowest score, until all slots have been filled. If a situation arises in which there are fewer slots left than businesses with the same score that would make them eligible for the spot(s), a lottery using a random-number generator and the relevant row numbers on the Excel sheet used for managing applications will be used to select the finalists for the remaining slot(s).

If a tentative grant recipient drops out for any reason, MESO will select a new recipient by going down the score-prioritized list to the next business on the list and use the lottery described above if there are multiple businesses with that same score.

MESO will verify following application information for each County approved grant recipient before processing that beneficiaries' grant:

1. Applicant must certify the financial impact of COVID 19 meets or exceeds the grant award amount for which they are applying.
 - a. For those Owner/Operators applying for multiple sites, they must submit proof of financial impact
2. Applicant must certify this grant award will be expended on costs not previously claimed by other CRF CARES funded awards (ELD Emergency Grant, PPP, Municipal Grants)
3. License type
 - a. OR proof of 12 consecutive months registered with DHS as licensed-exempt
4. Program Address
5. Applicant was not previously awarded a Child Care Assistance Grant

Evaluation – Parts A & B

Clackamas County will issue a survey to grant recipients in December 2020. The survey will contain the following:

Is the provider still in operation?

- Has the provider increased their capacity?
- Does the provider plan to continue in Operation past the expiration of their current license?
- Qualitative statements as to the impact of the grant on their operation.

Success will be measured by the number of applicants who responded positively to the questions and those who plan to continue past their current licensed period.

EXHIBIT B: SUBRECIPIENT BUDGET

	CARES CFDA #21.019	Lottery # 00501	Total	
Small Business Relief	1,000,000		1,000,000	
Admin Fee		100,000	100,000	
Total	1,000,000	100,000	1,100,000	

EXHIBIT C
CONGRESSIONAL LOBBYING CERTIFICATE

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Organization Name

Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

EXHIBIT D: Required Financial Reporting and Payment Schedule

SUBRECIPIENT shall receive payment according to the following schedule:

1. Administrative fee (\$100,000) payable upon execution of this Agreement.
2. Advance #1 (\$500,000) payable upon execution of this Agreement.
3. Advance #2 (\$500,000) payable upon mutual agreement of COUNTY Program Manager and SUBRECIPIENT based on rate of payout of previous funds advanced and anticipated need. If anticipated need is less than \$500,000 in Advance #2, COUNTY shall negotiate an accepted amount with MESO for the second advance.

At the second advance request, SUBRECIPIENT shall submit the most up-to-date general ledger (with line item detail) for payouts to program participants. The second advance request shall be in a format showing amounts received from COUNTY, minus expenses to-date, and showing balance on hand. Program participant expenses to-date on the second advance request should reconcile to the reported amounts expended in the submitted general ledger.

EXHIBIT E

WEEKLY/FINAL PERFORMANCE REPORTING

PERFORMANCE REPORTING SCHEDULE

MESO will hold weekly phone check-ins until all funds are distributed. A final performance report consolidating all data collected on the award shall be submitted by January 20, 2021.

PERFORMANCE REPORTING REQUIREMENTS

Grants Program – discussed weekly on the phone until all grants/loans are distributed, quarterly thereafter if needed.

Final Performance Reporting

Data elements shall be submitted in an excel spreadsheet and include the following information collected from program recipients:

- Number of applications received
- Number of awards made
 - Awards as #, \$ and % of allocation by voluntary reported demographic information
 - Award as #, \$, and % of allocation by region
 - Award as #, \$, and % of allocation by company size
 - Award as #, \$ and % of allocation to sole proprietors
- Program recipient data
 - Name of company
 - Employer Identification Number (EIN)
 - Oregon Business Identification Number (BIN)
 - Business Owner(s) Social Security Number
 - Address of company
 - Industry/NAICS
 - Amount of award
 - Legal business structure
 - # of employees as of February 29, 2020

Project Name: <i>Small Business Relief Funding - CARES</i>	Agreement #: 21-011
Federal Award #: N/A	Date of Submission: XX/XX/XX
Subrecipient: <i>Micro Enterprise Solutions of Oregon</i>	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

EXHIBIT E: Final Financial Report

Report of Funds received, expended, and reported as match (if applicable) under this agreement

Total Federal Funds <u>authorized</u> on this agreement:	
Total Federal Funds <u>paid to SUBRECIPIENT</u> on this agreement:	
Balance of unexpended Federal Funds (Line 1 minus Line 2):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____

EXHIBIT G: FEDERAL TERMS AND CONDITIONS

- 1) Federal Provisions
 - a) The use of all federal funds paid under this Agreement are subject to all applicable federal regulations, including the provisions described below.
 - b) SUBRECIPIENT must ensure that any further distribution or payment of the federal funds paid under this Agreement by means of any contract, subgrant, or other agreement between SUBRECIPIENT and another party for the performance of any of the activities of this Agreement, includes the requirement that such funds may be used solely in a manner that complies with the provisions of this Agreement.
 - c) SUBRECIPIENT must include and incorporate the provisions described below in all contracts and subgrants that may use, in whole or in part, the funds provided by this Agreement.
 - d) SUBRECIPIENT must comply, and ensure the compliance by subcontractors or subgrantees, with 41 USC 4712, Program for Enhancement of Employee Whistleblower Protection. SUBRECIPIENT must inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.
- 2) In accordance with US Treasury guidance, SUBRECIPIENT is subject to the following provisions, as applicable:
 - a) If SUBRECIPIENT has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to COUNTY.
 - b) For the purposes of these provisions, the following definitions apply:
 - i) “Contract” means this Agreement or any contract or subgrant funded by this Agreement.
 - ii) “Contractor” and “Subrecipient” and “Non-Federal entity” mean SUBRECIPIENT or SUBRECIPIENT’s contractors or subgrantees, if any.
 - c) 2 CFR 200.303 Internal Controls
 - d) 2 CFR 200.330 through 200.332 Subrecipient Monitoring and Management
 - e) Subpart F – Audit Requirements of 2 CFR 200.5XX
 - i) Contractor must comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
 - ii) If Contractor receives federal awards in excess of \$750,000 in a fiscal year, Contractor is subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Copies of all audits must be submitted to COUNTY within 30 days of completion.
 - iii) Contractor must save, protect and hold harmless DAS and COUNTY from the cost of any audits or special investigations performed by the Secretary of State with respect to the funds expended under this Contract. Contractor acknowledges and agrees that any audit costs incurred by Contractor as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Contractor and COUNTY.

- 3) System for Award Management. SUBRECIPIENT must comply with applicable requirements regarding the System for Award Management (SAM), accessible at <https://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining current information in SAM. SUBRECIPIENT must also comply with applicable restrictions on subawards (“subgrants”) to first-tier subrecipients (first-tier “subgrantees”), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

Attachment 1: Coronavirus Relief Fund Frequently Asked Questions

SUBRECIPIENT is responsible to read and implement guidance found in the Coronavirus Relief Fund Frequently Asked Questions (“CRFFAQ”), published by the US Department of Treasury, as it relates to this Agreement. The CRFFAQ is updated frequently and the most up-to-date version can be found at: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>



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

December 10, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Amendment to an Intergovernmental Agreement
 With Oregon Health Authority for
Behavioral Rehabilitation Services (BRS) Reimbursements

Purpose/Outcomes	To correct the language in the Intergovernmental Agreement to read “Shelter Services” instead of “Intensive Rehabilitation” in accordance with Oregon Administrative Rules (OAR) 410-170-0000 through 410-170-0120.
Dollar Amount and Fiscal Impact	No fiscal impact.
Funding Source	Oregon Health Authority.
Duration	Effective January 1, 2019 through December 31, 2020
Previous Board Action	The original IGA was signed by Don Krupp, County Administrator, on 12/23/2013; Amendment 1 signed by Ellen Crawford, Juvenile Director, on 2/5/14; Amendment 2 signed by Don Krupp, County Administrator on 2/18/2015; Amendment 3 signed by Don Krupp, County Administrator, on 12/12/16; Amendment 4 was signed by Jim Bernard, Chair, on 5/23/19.
Strategic Plan Alignment	1. Provide interventions, compliance monitoring, and restorative services to youth so they can be accountable to victims and the community to repair the harm they have caused 2. Ensure safe, healthy and secure communities.
Counsel Review	This contract has been reviewed and approved by County Counsel on November 30, 2020
Contact Person	Ed Jones, Juvenile Dept. Administrative Services Manager – 503-650-3169
Contract No.	144378-5

BACKGROUND:

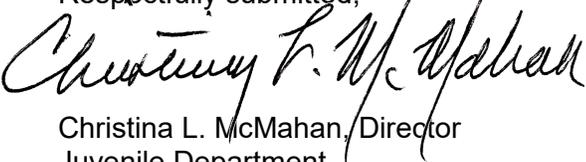
Attached is an Amendment to the Intergovernmental Agreement with Oregon Health Authority (OHA) for the partial reimbursement of shelter care bed costs. This amendment corrects the name of Behavior Rehabilitation Services (BRS) the Juvenile Department contracts to be

provided to youth, and matches changes to the Oregon Health Authority's 7/1/2020 BRS rate sheet.

RECOMMENDATION:

Staff recommends the Board approval of the Amendment to Intergovernmental Agreement No. 144378-5.

Respectfully submitted,



Christina L. McMahan, Director
Juvenile Department

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



Agreement Number 144378

**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 **5** to Agreement Number **144378** between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA” and

Clackamas County
By and through its Clackamas County Juvenile Department
2121 Kaen Road
Oregon City, OR 97045
Attention: Christina McMahan
Telephone: (503) 650-3180
Facsimile: (503) 655-8448
E-mail address: emcmahan@co.clackamas.or.us

hereinafter referred to as “County.”

1. Upon signature by all applicable parties, this Amendment shall be effective on (a) **December 31, 2018** or (b) when required, the date this Amendment has been approved by the Department of Justice, regardless of the date the Amendment is actually signed by all other parties.
2. The Agreement is hereby amended as follows:
 - a. Exhibit A, Part I Statement of Work Section 1. a. only, is amended as follows: Deleted language is struck through and new language is underlined and bold.
 1. County shall:
 - a. Provide ~~Intensive Rehabilitation~~ **Shelter Services for the Behavior Rehabilitation Services (BRS) program** as defined in, and in accordance with Oregon Administrative Rules (OAR) 410-170-0000 through 410-170-0120.

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, the County hereby certifies under penalty of perjury that:
 - a. The County is in compliance with all insurance requirements of Exhibit C of the original Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance for any extension of the insurance coverage required by Exhibit C of the original Agreement, within 30 days of execution of the original Agreement Amendment. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
 - b. The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;
 - c. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
 - d. 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;
 - e. 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>;
 - f. 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/portal/public/SAM/>;

- g. 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.
- h. County Federal Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is also required to provide OHA with the new FEIN within 10 days.

4. **County Data.** This information is requested pursuant to ORS 305.385.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

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

Street address: 2051 Kaen Road

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

Email address: lkrzmarzick@clackamas.us

Telephone: (503) 655-8788 / 503-919-1306 Facsimile: (503) 655-8448

Proof of Insurance: County shall provide the following information upon submission of the signed Agreement amendment. All insurance listed herein and required by Exhibit C of the original Agreement, must be in effect prior to Agreement execution.

Workers' Compensation Insurance Company: Self-Insured

Policy #: _____ Expiration Date: _____

5. Signatures.

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

**Clackamas County
By and through its Clackamas County Juvenile Department
By:**

_____	Jim Bernard
Authorized Signature	Printed Name
_____	_____
Chair	Date
_____	_____
Title	Date

**State of Oregon acting by and through its Oregon Health Authority
By:**

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

Approved for Legal Sufficiency:

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

OHA Health Systems

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date



NANCY S. BUSH
DIRECTOR

DEPARTMENT OF DISASTER MANAGEMENT
COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD OREGON CITY, OR 97045

December 10, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Apply for FY2020 Emergency Management Performance Grant
between Clackamas County and the State of Oregon

Purpose/Outcomes	The FY2020 Emergency Management Performance Grant (EMPG) will reimburse Clackamas County Disaster Management (CCDM) for up to 50% of pre-identified program costs.
Dollar Amount and Fiscal Impact	The grant agreement total value of the agreement is \$179,147. The grant is a 50% federal share grant that will reimburse CCDM for up to fifty percent of salaries and benefits of six employees.
Funding Source	FY 2020 Emergency Management Performance Grant via the State of Oregon Military Department, Office of Emergency Management (OEM)
Duration	Estimated to be effective July 1, 2020 and terminate on June 30, 2021
Previous Board Action	The Board approved the application for the FY20 EMPG on July 9, 2020.
Strategic Plan Alignment	1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Counsel Review	November 21, 2020
Contact Person	Nancy Bush, Director – Disaster Management Department, 503-655-8665
Contract No.	Unknown

BACKGROUND:

County emergency management programs are required by Oregon Revised Statutes 401. The EMPG is a recurring federal grant program providing limited reimbursement of a portion of the costs incurred in operating local emergency management programs. The funds provided are for the development of an all-hazard emergency management capability to promote preparedness, mitigation, response and recovery.

RECOMMENDATION:

Staff respectfully recommends BCC approval of the Disaster Management FY2019 EMPG application.

Respectfully submitted,

Nancy Bush, Director

**OREGON MILITARY DEPARTMENT
OFFICE OF EMERGENCY MANAGEMENT
EMERGENCY MANAGEMENT PERFORMANCE GRANT
CFDA # 97.042
CLACKAMAS COUNTY
\$179,147
Grant No: 20-503**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as “OEM,” and **Clackamas County**, hereinafter referred to as “Subrecipient,” and collectively referred to as the “Parties.”

1. Effective Date. This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred beginning on **July 1, 2020** and ending, unless otherwise terminated or extended, on **June 30, 2021** (the “Grant Award Period”). No Grant Funds are available for expenditures after the Grant Award Period. OEM’s obligation to disburse Grant Funds under this Agreement is subject to Sections 6 and 10 of this Agreement.

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

- Exhibit A: **Project Description and Budget**
- Exhibit B: **Federal Requirements and Certifications**
- Exhibit C: **Subcontractor Insurance**
- Exhibit D: **Information required by 2 CFR 200.331(a)**

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

3. Grant Funds; Matching Funds. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed **\$179,147** in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program will be from the Fiscal Year 2020 Emergency Management Performance Grant (EMPG) Program. Subrecipient shall provide matching funds for all Project Costs as described in Exhibit A.

4. Project. The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.

5. Reports. Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

a. Performance Reports.

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon goals and objectives. The narrative reports will address specific information regarding the activities carried out under the FY 2020 Emergency Management Performance Grant Program and how they address identified work plan elements.
- ii. Reports are due to OEM on or before the 15th day of the month following each subsequent calendar quarter (ending on March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.

b. Financial Reimbursement Reports.

- i. To receive reimbursement, Subrecipient must submit a signed Request for Reimbursement (RFR), using a form provided by OEM, that includes supporting documentation for all grant and, if applicable, match expenditures. RFRs must be submitted monthly during the term of this Agreement. RFRs must be submitted on or before 30 days following each subsequent calendar month, and a final RFR must be submitted no later than 30 days following the end of the grant period.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period. Subrecipient agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

6. Disbursement and Recovery of Grant Funds.

- a. Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of an RFR. Eligible costs are the reasonable and necessary costs incurred by Subrecipient for the Project, in accordance with the Emergency Management Performance Grants guidance and application materials, including without limitation the United States Department of Homeland Security Notice of Funding Opportunity Announcement (NOFO), that are not excluded from reimbursement by OEM, either by this Agreement or by exclusion as a result of financial review or audit. The guidance, application materials and NOFO are available at <http://www.oregon.gov/OEM/emresources/Grants/Pages/EMPG.aspx>
- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.

- ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
- iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. Subrecipient has provided to OEM a RFR in accordance with Section 5.b of this Agreement.

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

7. Representations and Warranties of Subrecipient. Subrecipient represents and warrants to OEM as follows:

a. Organization and Authority. Subrecipient is a political subdivision of the State of Oregon and is eligible to receive the Grant 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, (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 or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by 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 subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. NIMS Compliance. By accepting FY 2020 funds, Subrecipient certifies that it has met National Incident Management System (NIMS) compliance activities outlined in the Oregon NIMS Requirements located through the OEM at http://www.oregon.gov/OEM/emresources/Plans_Assessments/Pages/NIMS.aspx

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

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, sub-recipients (collectively hereafter “contractors”), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- b. Retention of Records.** Subrecipient 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 until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200, and to apprise itself of all rules and regulations set forth.
- c. Audits.**

 - i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.
 - ii. Audit costs for audits not required in accordance with 2 CFR 200 Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
 - iii. Subrecipient shall save, protect and hold harmless the OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the 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 or any other agreement between Subrecipient and the State of Oregon.

9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance

- a. Subagreements.** Subrecipient may enter into agreements (hereafter “subagreements”) for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law

(including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).

- i. Subrecipient shall provide to OEM copies of all Requests for Proposals or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.
 - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
 - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
 - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
 - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.
 - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.

- iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
 - v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
 - vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
 - vii. Subrecipient agrees to comply with 2 CFR 200.313 pertaining to use and disposal of equipment purchased with Grant Funds, including when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
 - viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
 - ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with the Emergency Management Performance Grant Program.
- c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

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

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

10. Termination

- a. Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
 - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, 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.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. Settlement upon Termination.** Immediately upon termination under Sections 10.a.i., v. or vi., no Grant Funds shall be disbursed by OEM, and Subrecipient shall return to OEM Grant Funds previously disbursed to Subrecipient by OEM in accordance with Section 6.c and the terminating party may pursue additional remedies in law or equity. Upon termination pursuant to any other provision in this Section 10, no further Grant Funds shall be disbursed by OEM and Subrecipient shall return funds to OEM in accordance with Section 6.c, except that Subrecipient may pay, and OEM shall disburse, funds for obligations incurred and approved by OEM up to the day that the non-terminating party receives the notice of termination. Termination of this Agreement does not relieve Subrecipient of any other term of this Agreement that may survive termination, including without limitation Sections 11.a and c.

11. GENERAL PROVISIONS

- a. Indemnity.** To the extent authorized by law, Recipient shall defend (subject to ORS chapter 180), indemnify, save and hold harmless OEM and its officers, employees and agents from and

against any and all claims, suits, actions, proceedings, losses, damages, liability and court awards including costs, expenses, and attorneys' fees incurred related to any actual or alleged act or omission by Recipient, or its employees, agents or contractors. This Section shall survive expiration or termination of this Agreement.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with OEM, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon such recipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the recipient's indemnification ability, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. 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 or any other party, organization or individual.
- f. No Third Party Beneficiaries.** OEM 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.

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

- g. Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to Subrecipient or OEM at the appropriate address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be

deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

- h. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. 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.
- j. 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 subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM 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 is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

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

THE PARTIES, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

CLACKAMAS COUNTY

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required for Subrecipient)

By _____
Subrecipient’s Legal Counsel

Date _____

Subrecipient Program Contact:

Daniel Nibouar
Deputy Disaster Manager
Clackamas County Disaster Management
1710 Red Soil Ct.
Oregon City, OR 97045
503-650-3381
dnibouar@clackamas.us

Subrecipient Fiscal Contact:

Michael Morasko
Senior Accountant
Clackamas County
2051 Kaen Rd.
Oregon City, OR 97045
503-742-5435
mmorasko@clackamas.us

STATE OF OREGON, acting by through its Oregon
Military Department, Office of Emergency Management

By _____

Stanton Thomas
Mitigation and Recovery Services Section Manager, OEM

Date _____

APPROVAL FOR LEGAL SUFFICIENCY

By Samuel B. Zeigler via email
Senior Assistant Attorney General

Date October 13, 2020

OEM Program Contact:

Jim Jungling
Program Coordinator, OEM
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3552
jim.jungling@state.or.us

OEM Fiscal Contact:

Nicki Powers
Grants Accountant, OEM
Oregon Military Department
Office of Emergency Management
PO Box 14370
Salem, OR 97309-5062
503-378-3734
nicki.powers@state.or.us

EXHIBIT A

Project Description and Budget

I. Project Description

The FY2020 EMPG Program focuses on the development and sustainment of core capabilities as outlined in the National Preparedness Strategy. Particular emphasis is placed on building and sustaining capabilities that address high consequence events that pose the greatest risk to the security and resilience of the United States. Capabilities are the means to accomplish a mission, function, or objective based on the performance of related tasks, under specified conditions, to target levels of performance. The FY2020 EMPG Work Plan identifies the specific tasks to be performed towards the development and sustainment of core capabilities in Subrecipient's jurisdiction. The funds from this agreement are meant to supplement a portion of Subrecipient's day-to-day operational costs for Emergency Management, as outlined in Subrecipient's approved Work Plan. The Work Plan may be updated upon approval by OEM.

II. Budget

There is a 50% cash match requirement on this grant.

Grant Funds:	\$179,147
Match Funds:	\$179,147
Total Budget:	\$358,294

Personnel Services – Nancy Busch	\$88,539
Personnel Services – Daniel Nibouar	\$60,370
Personnel Services – Molly Bradley	\$51,396
Personnel Services – Jay Wilson	\$63,848
Personnel Services – Jamie Poole	\$55,747
Personnel Services – Jacki Nerski	\$38,394
General Office Supplies	\$
Other Supplies	\$
Rent	\$
Phone	\$
Other Utilities	\$
Contractual/Professional Services	\$
Maintenance Costs	\$
Travel/Vehicle Expenses/Mileage	\$
Training/Workshops/Conferences	\$
Cost Allocations/De Minimis	\$
Other	\$
Equipment	\$
Total (Grant plus Match)	\$358,294

EXHIBIT B

Federal Requirements and Certifications

I. General. Subrecipient agrees to comply with all federal requirements applicable to this Agreement. Those federal requirements include, without limitation, financial management and procurement requirements; requirements for maintaining accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP); and all other financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* published at 55 Federal Register 6736 (February 26, 1990.)
- C. Compliance with Applicable Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
 - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
 - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
 2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
 3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
 4. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
 5. 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
 6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to

demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.

- 1. Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
 - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
 - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
 - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
 - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
 - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
- 2. Equal Employment Opportunity Program.** Subrecipient, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subrecipient must maintain a current copy on file.
- 3. Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

E. Environmental and Historic Preservation.

- 1.** Subrecipient shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
 - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
 - b. National Historic Preservation Act, 16 USC § 470 et seq.
 - c. Endangered Species Act, 16 USC § 1531 et seq.

- d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subrecipient to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subrecipient shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
3. For any of Subrecipient's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subrecipient, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.

F. PROCUREMENT OF RECOVERED MATERIALS. Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

G. SAFECOM. If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

H. Drug Free Workplace Requirements. Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

I. Human Trafficking (2 CFR Part 175). Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.

J. Fly America Act of 1974. Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.

- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS’s approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.
- Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.
- R. Construction Contracts.**
1. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60,

“Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).
3. Contracts awarded by Grantee in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
4. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).

S. Funding Agreements. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and Grantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Grantee must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

T. Terrorist Financing. Subrecipient must comply with US Executive Order 13224 and US law that prohibits transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of subrecipients to ensure compliance with the EO and laws.

U. Federal Leadership on Reducing Text Messaging while Driving. Subrecipient is encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

V. Energy Policy and Conservation Act. Subrecipient must comply with the requirements of 42 USC § 6201 which contains policies relating to energy efficiency that are defined in the state energy conservation plan issues in compliance with the Act.

W. DHS Specific Acknowledgements and Assurances. All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.

3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. If, during the past three years, recipients have been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency (LEP)), sex, age, disability, religion, or familial status, recipients must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS FAO and the DHS Office of Civil Rights and Civil Liberties (CRCL) by e-mail at crcl@hq.dhs.gov or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.
6. In the event courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS FAO and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

X. Nondiscrimination in Matters Pertaining to Faith-Based Organizations. It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Subrecipient must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Subrecipient shall require in its first tier subagreements with entities 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 performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to OEM. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement 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 subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

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). Employers 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 State. 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 OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

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 OEM:

Bodily Injury, Death and Property Damage:

\$500,000 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 OEM, 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.

"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 Subrecipient'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 OEM may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Subrecipient 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 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.

INSURANCE REQUIREMENT REVIEW. Recipient agrees to periodic review of insurance requirements by OEM under this Agreement and to provide updated requirements as mutually agreed upon by OEM and Recipient.

OEM ACCEPTANCE. All insurance providers are subject to OEM acceptance. If requested by OEM, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to OEM's representatives responsible for verification of the insurance coverages required under this Exhibit C.

Exhibit D

Information required by 2 CFR 200.331(a)

1. Federal Award Identification:
 - (i) Sub-recipient name (which must match registered name in DUNS):
 - (ii) Sub-recipient's DUNS number: 096992656
 - (iii) Federal Award Identification Number (FAIN): EMS-2020-EP-00004-S01
 - (iv) Federal Award Date: October 1, 2019
 - (v) Sub-award Period of Performance Start and End Date: From July 1, 2020 to June 30, 2021
 - (vi) Amount of Federal Funds Obligated by this Agreement: \$179,147
 - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement: * \$215,447
 - (viii) Total Amount of Federal Award committed to the subrecipient by the pass-through entity: \$215,447
 - (ix) Federal award project description: Emergency Management Performance Grant (EMPG) Program provides resources to assist state, local, tribal, and territorial governments in preparing for all hazards, as authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121 et seq.).
 - (x) (a) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
(b) Name of pass-through entity: Oregon Military Department, Office of Emergency Management
(c) Contact information for awarding official of the pass-through entity: Andrew Phelps, Director, PO Box 14370, Salem, OR 97309-5062
 - (xi) CFDA Number and Name: 97.042, Emergency Management Performance Grants
Amount: \$5,370,008
 - (xii) Is Award R&D? No
 - (xiii) Indirect cost rate for the Federal award: 12%

2. Subrecipient's indirect cost rate: 0%

*The Total amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current Federal fiscal year.



NANCY S. BUSH
DIRECTOR

DEPARTMENT OF DISASTER MANAGEMENT
COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD OREGON CITY, OR 97045

December 10, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Letter of Promulgation extending the promulgation
date from March 31, 2021 to March 31, 2022

Purpose/Outcomes	The Emergency Operations Plan (EOP) provides the structure and processes that Clackamas County utilizes to respond to and initially recover from an event. The goal is to have an EOP that outlines the County's resources and actions during disaster, recovery and mitigation.
Dollar Amount and Fiscal Impact	N/A
Funding Source	GF – Update will be done with current Disaster Management staff
Duration	March 31, 2022
Previous Board Action	The Board approved the Letter of Promulgation on December 1, 2020 during Administrator Issues.
Strategic Plan Alignment	1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Counsel Review	November 25, 2020
Contact Person	Nancy Bush, Director – Disaster Management Department, 503-655-8665
Contract No.	N/A

BACKGROUND:

The EOP was to be updated by March 2021, however, due to wildfires and COVID it is not possible to meet the deadline. The update process was started in January with other county departments, but was halted. It typically takes a year to do a proper update of the EOP which includes input from most county departments, external partners, and adequate time for public review.

CCDM staff have reviewed the current EOP and are confident that it covers what is needed as we continue to update the plan in format and with lessons learned from COVID and Wildfire declarations. If the update is completed before March, 2022 staff will submit to the BCC for review and promulgation at that time.

RECOMMENDATION:

Staff respectfully recommends BCC approval of the Letter of Promulgation extending the EOP to March 31, 2022.

Respectfully submitted,

Nancy Bush, Director

Letter of Promulgation

To all Recipients:

Promulgated herewith is the Emergency Operations Plan for Clackamas County. This plan provides a framework within which the County can plan and perform its emergency functions during a disaster or national emergency.

This Emergency Operations Plan is a component of the County's comprehensive approach to emergency management that ensures that the County is prepared to prevent, protect against, mitigate the effects of, respond to, and recover from the hazards and threats that pose the greatest risk to the County.

Focused on response and short-term recovery activities, this Emergency Operations Plan provides a framework for how the County will conduct emergency operations. The plan identifies key roles and responsibilities, defines the primary and support roles of County agencies and departments, outlines the steps for coordinating with response partners, and establishes a system for incident management. The outlined framework is consistent with the Standardized Emergency Management System and the National Incident Management System.

This plan has been reviewed by the Clackamas County Disaster Management Director and approved by the Board of County Commissioners. This Promulgation will end March 31, 2022 at which time an updated plan will be promulgated by the Board of County Commissioners. The extension of this plan is due to an unprecedented year of disaster declarations and the need to incorporate lessons learned from all sectors.

All recipients are requested to advise the Clackamas County Disaster Management Director of any changes that might result in its improvement or increase its usefulness. Plan changes will be transmitted to all addressees on the distribution list.

Jim Bernard, Chair

Martha Schrader, Commissioner

Paul Savas, Commissioner

Ken Humberston, Commissioner

Sonya Fischer, Commissioner

DATE



**BUSINESS AND COMMUNITY SERVICES
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

Laura Zentner, BCS Director

December 10, 2020

Board of County Commissioners
Clackamas County

Members of the Board:

Amendment #2 to the Cooperative Intergovernmental Agreement between the City of Milwaukie and the North Clackamas Parks and Recreation District (NCPRD)

Purpose/Outcome	This Intergovernmental Agreement governs the roles, responsibilities and requirements for NCPRD and the City of Milwaukie regarding the operation, management and administration of parks, recreational facilities and programs.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Ongoing
Previous Board Action/Review	January 21, 2010 Business Meeting – Approval of Amendment # 1 to the Intergovernmental Agreement.
Strategic Plan Alignment	Aligns with BCS strategic result that customers can be assured that critical infrastructure and facilities for delivery of essential community services such as parks will be built. Aligns with the County Performance Clackamas goal of “Ensuring a Safe, Healthy and Secure Community” by providing park and recreation services. Aligns with the County Performance Clackamas goal of “Building Public Trust through Good Government” by ensuring Bylaws composition covers diverse audiences and covers citizen representation from throughout the District boundaries.
Counsel Review	1. <i>Date of Counsel review: 12/1/2020</i> 2. <i>Initials of County Counsel performing review. - JM</i>
Procurement Review	1. Was the item processed through Procurement? No 2. If no, provide brief explanation: This is an IGA.
Contact Person	Laura Zentner, BCS Director 503-742-4351 Kandi Ho, Acting Director NCPRD 503-794-8001
Contract No.	N/A

BACKGROUND:

The City of Milwaukie and the North Clackamas Parks and Recreation District entered into a Cooperative Intergovernmental Agreement in 1992, following the formation of the District. The Cooperative Intergovernmental Agreement (IGA) was revised on October 21, 2008 with a new agreement and a first amendment to the IGA was entered into on January 21, 2010.

The IGA provided for a District Advisory Board. Since its establishment, the District Advisory Board has remained active and has recently unanimously agreed to amend its bylaws to provide additional process and clarity to the District Advisory Board's scope, goals, and composition.

One of the more significant changes to those bylaws concerned the name and composition of the District Advisory Board. The name of the District Advisory Board has been changed to the District Advisory Committee.

This second amendment to the IGA includes the amended bylaws in their entirety along with Attachment A.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners, acting as the governing body of the North Clackamas Parks and Recreation District, proceed with the approval of Amendment #2 to the IGA with the City of Milwaukie for parks and recreation services.

ATTACHMENTS:

1. Amendment #2 to the Cooperative Intergovernmental Agreement between the City of Milwaukie and the North Clackamas Parks and Recreation District.
2. Amended bylaws including Attachment A

Respectfully submitted,



Laura Zentner, Director
Business and Community Services

Second Amendment to the Cooperative Intergovernmental Agreement between the City of Milwaukie and the North Clackamas Parks and Recreation District

The City of Milwaukie and the North Clackamas Parks and Recreation District entered into a Cooperative Intergovernmental Agreement (IGA) on October 21, 2008. A first amendment to the IGA was entered on January 2010.

The IGA provided for a District Advisory Board. Since its establishment, the District Advisory Board has remained active and has recently unanimously agreed to amend its bylaws to provide additional process and clarity to the District Advisory Board's scope, goals, and composition.

One of the more significant changes to those bylaws concerned the name and composition of the District Advisory Board. The name of the District Advisory Board has been changed to the District Advisory Committee.

By way of this second amendment to the IGA, the City of Milwaukie accepts the amended bylaws in their entirety along with the District map both of which are included as Attachment A, and agrees to the name change from the District Advisory Board to the District Advisory Committee. Moreover, the District Advisory Board as set forth under Article V (A)(1) and (2) of the existing IGA, is amended as set forth in the amended bylaws and as follows:

- a) The 11-member committee representation will be as follows:
 - i) 2 members from the City of Milwaukie;
 - ii) 2 members who are residents of unincorporated sub-area 1 within the District depicted on Attachment A;
 - iii) 2 members who are residents of unincorporated sub-area 2 within the District depicted on Attachment A;
 - iv) 2 members who are residents of unincorporated sub-area 3 within the District depicted on Attachment A;
 - v) 2 members who are residents of unincorporated sub-area 4 within the District depicted on Attachment A; and
 - vi) 1 member from a District community center advisory board(s).

- b) The district agrees to appoint the individuals nominated by the City Council to fill the City's representative seats.

Additionally, the District Advisory Board shall now be referred to throughout the IGA as the District Advisory Committee, and Article V(A)(5) of the existing IGA is stricken in its entirety.

Approved by:

City of Milwaukie

North Clackamas Parks and Recreation District

Dated: _____ Dated: _____

**North Clackamas Parks and Recreation District Advisory Committee
BYLAWS**

ARTICLE I

NAME. The name of this Committee is the North Clackamas Parks & Recreation District Advisory Committee (DAC)

ARTICLE II

BOUNDARIES. The boundaries of the District shall be the same as those redrawn after the withdrawal of the City of Happy Valley and as depicted in Attachment A and titled NCPRD Boundaries and Advisory Committee Sub-Areas Map and dated October 28, 2020. The Boundaries of subareas 1, 2, 3, 4 and the city of Milwaukie shall be as depicted in Attachment A.

ARTICLE III

PURPOSE. The purpose of the DAC is to advise the Board of Directors of the North Clackamas Parks & Recreation District (NCPRD) on the acquisition, design, planning, and development of parks and recreation facilities within the District, and to advise the Board of Directors on programs, maintenance, and operations; to meet with the Board of Directors once yearly; and to review and provide input prior to the publication of the NCPRD annual report.

GOALS. The goals of the DAC are as follows:

- a) To evaluate and address the programs and facilities of the NCPRD concentrating on the annual work plan that addresses challenges, desires, and needs of all district residents.
- b) To make policy-level recommendations regarding acquisitions, assets, capital improvements, programs, maintenance, and operations to be approved by the Board of Directors.
- c) To provide recommendations during the annual budget process for the acquisition, development, operation and maintenance of the NCPRD facilities and programs. In addition, the DAC will identify and prioritize necessary capital projects and provide project recommendations to the Board of Directors. The recommendations for maintenance and operations, and capital improvements shall be reviewed by the District Budget Officer, who will then forward their recommendations to the North Clackamas Parks & Recreation Budget Committee. The North Clackamas Parks & Recreation Budget Committee will then submit recommendations to the Board of Directors.

ARTICLE IV

MEMBERSHIP. The DAC shall consist of eleven (11) members. The Board of Directors shall appoint all members. Membership shall not be limited by race, creed, color, gender, age, heritage, religion, national origin, or income. Membership should reflect the economic, social, demographic, and cultural diversity of the entire District. All members must be residents of the District.

- a) The 11-member board representation will be as follows:
 - i) 2 members from the City of Milwaukie;
 - ii) 2 members who are residents of unincorporated sub-area 1 within the District depicted on Attachment A;
 - iii) 2 members who are residents of unincorporated sub-area 2 within the District depicted on Attachment A;
 - iv) 2 members who are residents of unincorporated sub-area 3 within the District depicted on Attachment A;
 - v) 2 members who are residents of unincorporated sub-area 4 within the District depicted on Attachment A; and
 - vi) 1 member from a District community center advisory board(s).
- b) The Board of Directors may appoint one of its members as a non-voting liaison to the DAC.
- c) The composition of the DAC is based on the boundaries and populations depicted in Attachment A, and will be revisited and may be adjusted every four years, or in the event of significant District boundary changes or major population changes, or at the discretion of the DAC.
- d) Terms are for a period of four (4) fiscal years, beginning on July 1st of the first fiscal year and ending on June 30th of the fourth fiscal year. Committee member terms will be staggered among the eleven DAC members. At the end of each initial term, DAC members, other than those appointed under (a)(i) and (vi) above, and who wish to continue their service for a second term, will need to participate in the recruitment process used to fill vacancies and may be reappointed by the Board of Directors. The representatives appointed under subsections (a)(i) – (vi) above, may serve a maximum of two consecutive terms. Representatives may reapply for vacancies on the committee following a four (4) year break in service (one full term).
- e) All sub-areas may choose to reappoint their designees, or submit new representatives for Board of Directors' approval. New designees will be recruited and nominated by a sub-area nominating committee located within that particular sub-area, and if no such committee exists at the time of the recruitment, then from a committee composed of 2 members of Clackamas County staff, 2 members of the DAC, and 2 members of Community Planning Organizations or other community groups located within the particular sub-area. All members to be appointed by the Board of Directors.

- f) A vacancy occurs when any member of the DAC dies, resigns, is removed, has more than three (3) unexcused absences from meetings during a fiscal year, or no longer is a resident of the District. Upon failure of any member to attend three consecutive meetings without a valid excused absence, the DAC may recommend termination of that appointment to the Board of Directors, and the Board of Directors may remove the incumbent from the DAC and declare the position vacant. A valid excused absence requires that the DAC member notify a DAC officer or a District staff member prior to the meeting to be missed, except for the case of an emergency. Vacancies are filled in the same manner as initial appointments and for the unexpired term of the vacant position.
- g) All DAC members shall serve without compensation.

ARTICLE V

OFFICERS & STAFFING. The officers and staffing of the DAC shall include the following:

- a) Chairperson. The Chairperson shall preside over all DAC meetings, assist the NCPRD Director with setting the DAC Meeting agendas, and establish committees and appoint committee chairpersons. The Chair will serve as the DAC representative in meetings with the Board of Directors or at various community meetings when appropriate. The Chair will also serve as the official spokesperson for the DAC whenever there is an issue or statement required when it is appropriate for the DAC to make that response or statement.
- b) Vice-Chairperson: The Vice Chairperson shall execute all powers of the Chairperson in the absence of the chairperson;
- c) Secretary: The Secretary shall maintain minutes and attendance records of business meetings. Additionally, the Secretary will initiate the recruitment process to fill vacancies upon term expirations. The Secretary position is neither elected nor appointed but rather filled by NCPRD staff.
- d) Board of Directors Liaison: The Board of Directors may elect to appoint a liaison/liaisons to the DAC in an ex-officio capacity with no voting powers or rights but who has the authority to speak on behalf of the Board of Directors and to participate in discussions about actions under consideration for recommendation to the Board of Directors. The liaison is present as a representative of the Board of Directors and not in their individual capacity.

SELECTION OF OFFICERS. The officers shall be selected by the DAC membership by simple majority vote. Elections shall be annually as the first order of business at the first DAC meeting of the fiscal year in July. The outgoing Chair will conduct the election, and immediately following results, turn the meeting over to the newly elected Chair. The DAC

shall provide the County Public and Government Affairs Department with a current list of officers.

TERM OF OFFICE. The term of office for all officers shall be one (1) year, the officer shall continue to serve until a successor is elected to that office. Officers may be re-elected and may serve a maximum of two consecutive terms.

VACANCIES. A member may be elected as an officer to fill a vacancy and shall serve the remainder of the unexpired term and until a successor is elected.

ARTICLE VI

MEETINGS. The DAC may hold regular meetings monthly. All meetings shall be subject to the requirements of the Oregon Public Meetings Law.

Special meetings may be called by any two DAC Members and an Officer. Only business specified in the agenda for the special meeting may be considered. Notice of all meetings shall be provided as required by ORS 192.640 of the Oregon Public Meetings Law. Minutes of all meetings shall be kept and shall be available for public inspection as required by Oregon Public Meetings Law. A copy of all meeting minutes shall be provided to the County Public and Government Affairs Office.

QUORUM and VOTING. A quorum shall be present at a meeting in order for the DAC to transact business. A quorum consists of six (6) members, which is a majority of all members of the DAC. A vacancy on the DAC does not affect the quorum requirements. The concurrence of a majority of the DAC members present shall be required to decide any matter.

RECORDS. All records of the DAC shall be subject to disclosure except as allowed by exemptions of the Oregon Public Records Law.

ARTICLE VII

HEARING PROCESS AND PROCEDURE. The principles of parliamentary rules of procedures such as Robert's Rules of Order shall govern proceedings at any meeting of the DAC. The Chair shall be guided by these principles in deciding any procedural questions. The Chair's decision on procedural matters may be overruled by a majority of the members voting on the question. The DAC may establish a more detailed hearing process and procedure to provide for an orderly process for holding a public hearing. All meetings shall comply with the Oregon Public Meetings Law.

ARTICLE VIII

COMMITTEES. The DAC may from time to time create committees as required to promote the purposes and objectives of the DAC. A Chairperson for each committee shall be selected by the DAC Chairperson.

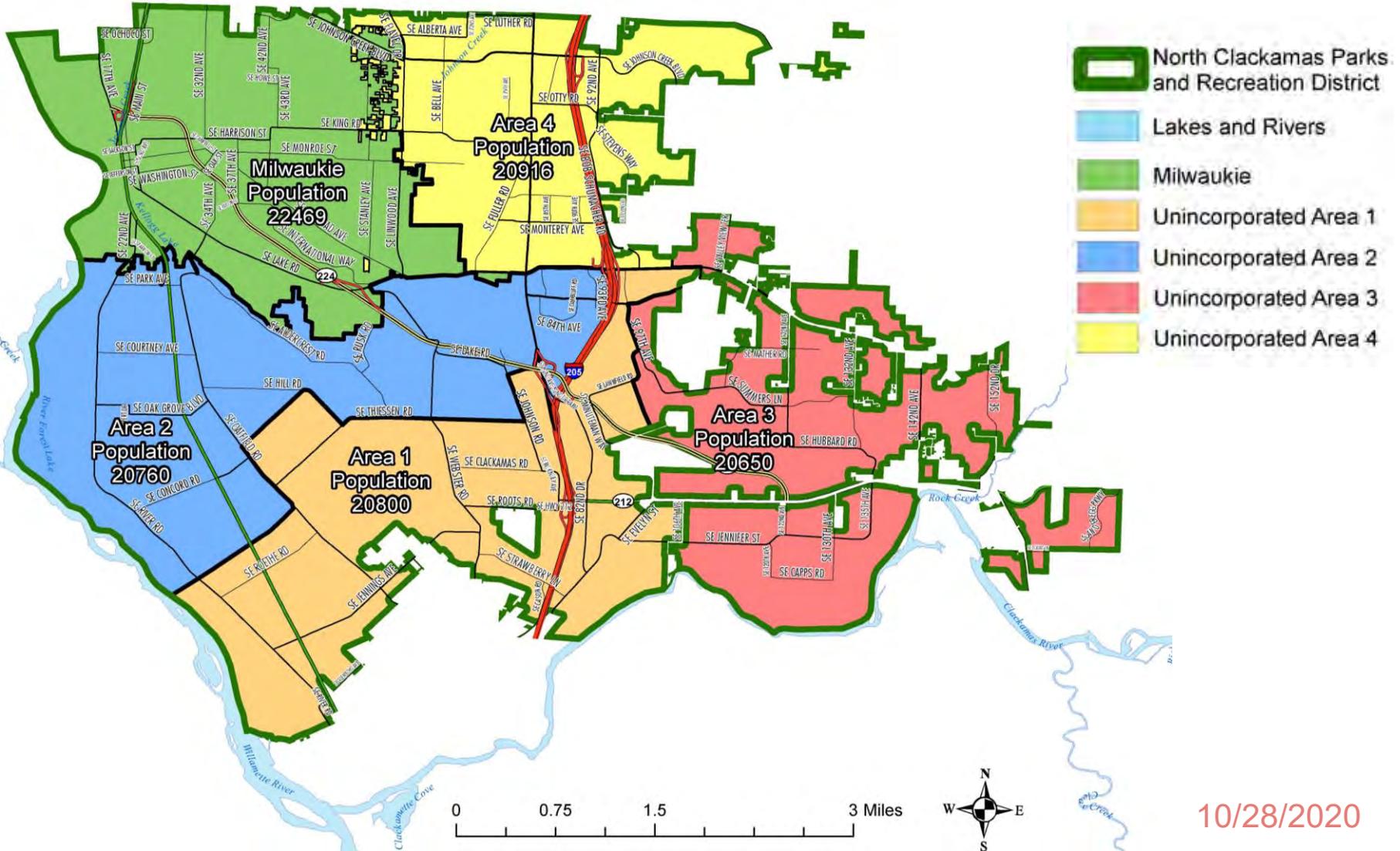
ARTICLE IX

AMENDMENTS. These bylaws may be amended at any regular DAC meeting provided written notice of the proposed amendment is submitted at a prior, regular meeting. In order to be effective such amendments must also be approved in writing by County Counsel and further submitted to the Board of Directors for final approval. The DAC may not amend Article IV Membership in any way that differs with the requirements of the IGA between NCPRD and the City of Milwaukie.

The amended bylaws shall supersede all previous bylaws and become the governing rules for the DAC.

N CPRD Boundaries and Advisory Committee Sub-Areas Map

An 11 member board with 5 subareas (2 representatives per subarea)





December 10, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement Between the City of Gladstone and Water Environment Services Pertaining to Joint Collection System Work

Purpose/Outcome	Adopt IGA allowing WES and City of Gladstone to partner on I&I reduction project
Dollar Amount and Fiscal Impact	No additional WES expenditures – reimbursed by City of Gladstone
Funding Source	Capital funds as needed
Duration	Length of project or January 1, 2023, whichever is sooner
Previous Board Action/Review	None.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
Counsel Review	This IGA was reviewed and approved by County Counsel on December 2, 2020.
Contact Person	Chris Storey, Water Environment Services – Assistant Director

Clackamas Water Environment Services (“WES”) has been coordinating with the City of Gladstone (“City”) to address collection system improvements for the benefit of both parties, specifically at the intersection of the systems and projects relating to inflow and infiltration (“I&I”) into the city’s sewer collection system.

The City is undertaking several projects relating to I&I reduction in response to both system need and a Mutual Agreement and Order (No. WQ/M-NWR2019-038) with the State of Oregon. The City Council also authorized phased in rate increases. The first in January 2020 and the second in January 2021 to meet the requirements of the MOA. The City and WES engineering staff have held conversations and believe that by partnering on this work the parties will realize administrative efficiencies and reduced costs by engaging one engineering consultant to complete Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project

("Project"). The Project involves hiring an engineering consultant to provide engineering services to conduct investigations that will identify I/I sources, design rehabilitation projects to correct the identified I/I sources, acquire permits associated with the rehabilitation projects, provide construction management services during construction, and conduct post rehabilitation flow monitoring and analysis to determine level of I/I reduction in the area tributary to the Mount Talbert Interceptor in Happy Valley and a portion of the City's sewer system.

Under this approach, WES will manage the Project, including construction. As work is completed, WES will invoice the City quarterly and the city shall reimburse expenses accrued related to the work beginning October 1, 2020.

WES staff supports the cost savings and coordinated efforts represented by this approach. The IGA as drafted was approved by the Gladstone City Council on November 10th, 2020.

County Counsel has reviewed and approved this IGA.

RECOMMENDATION

Staff respectfully recommends the Board of County Commissioners, acting in their capacity as the governing body of Water Environment Services, authorize and enter into the attached intergovernmental agreement.

Sincerely,

Greg Geist Digitally signed by Greg Geist
Date: 2020.12.02 12:04:38
-08'00'

Greg Geist
Director

Attachments: Form of IGA as approved by Gladstone City Council & related exhibits

**INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF GLADSTONE
AND WATER ENVIRONMENT SERVICES
RELATED TO THE MT. TALBERT AND GLADSTONE INFILTRATION AND INFLOW
SOURCE IDENTIFICATION AND REHABILITATION PROJECT**

THIS AGREEMENT (this "Agreement") is entered into by and between the **City of Gladstone** ("City"), a political subdivision of the State of Oregon, and **Water Environment Services** ("District"), an intergovernmental entity formed pursuant to ORS Chapter 190, 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 District has completed the procurement of the Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project ("Project"). The Project involves hiring an engineering consultant to provide engineering services to conduct investigations that will identify Infiltration and Inflow (I/I) sources, design rehabilitation projects to correct the identified I/I sources, acquire permits associated with the rehabilitation projects, provide construction management services during construction, and conduct post rehabilitation flow monitoring and analysis to determine level of I/I reduction in the area tributary to the Mount Talbert Interceptor in Happy Valley and a portion of the City's sewer system.

The District and the City would like to take advantage of administrative efficiencies and cost effectiveness by engaging one engineering consultant to complete the Project for both Parties.

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 January 1, 2023, whichever is sooner.
2. **Rights and Obligations of the City.**
 - A. The City agrees to provide "District-Provided Services" and "General Assumptions" as applicable to Tasks 3 Gladstone Existing Data Review and SSES Planning and Tasks 6 Gladstone Field Work and I/I Source Investigation of the Project ("City Work"), as more specifically described in Exhibit "A" ("Work"), attached hereto and incorporated herein.
 - B. The District shall invoice quarterly and the City shall reimburse expenses accrued relating to the Work beginning on or about October 1st, 2020. The estimated full cost of the City Work, approximately \$461,822.00, shall be paid in full at completion of the Project, currently estimated on January 1, 2023. The parties agree that, irrespective of the above estimate, the City shall be fully responsible for all costs

relating to the City Work and such amount will be paid to District on or before January 1, 2023, unless the City Work is not yet complete, in which case full payment will be made 30 days after completion of the City Work. If, during the term of the Agreement, the City notifies District that reimbursements required under this Agreement may impair the City's ability to perform work planned under either its current Memorandum of Agreement and Order with the Oregon Department of Environmental Quality, or the City's adopted Capital Improvement Plan regarding sanitary or surface water infrastructure, then the parties agree that they shall hold discussions regarding the timing of the reimbursements contemplated under this Agreement.

3. Rights and Obligations of the District.

- A. The District hereby agrees to pay the full cost of the Work to the consultant, subject to reimbursement for the City Work pursuant to Section 2 above.
- B. The District agrees to provide "District-Provided Services" and "General Assumptions" as applicable to Tasks 1, 2, 4, 5, and 7 of the Project ("District Work"), as more specifically described in Exhibit "A."

4. Work Plan and Project Schedule.

- A. It is the desire of both Parties to complete the Project as soon as practicable, if possible prior to January 1, 2023.
- B. In the event any part of the Work is unable to be completed by January 1, 2023, the Parties may mutually agree in writing to adjust the Work timeline and this Agreement, or modify or terminate the Project as necessary. In the event of alterations to the Work, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall the City claim any damages, monetary or otherwise, resulting from the District's failure to complete the Project by January 1, 2023.

5. Representations and Warranties.

- A. *District Representations and Warranties:* District represents and warrants to City that District 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 District enforceable in accordance with its terms.
- B. *City Representations and Warranties:* City represents and warrants to District that City 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 City 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 City or the District may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

- B. Either the City or the District 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 City or the District 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. Either Party may terminate this Agreement in the event the Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or 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 the the Party is prohibited from paying for such Work from the planned funding source.
- E. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- F. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination. Specifically, the City shall be obligated to pay District for all City Work that occurred prior to the termination and any costs arising from the City's termination of the Agreement and/or the ceasing of the City Work and District shall be required to complete all work previously paid for by City.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the District, 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 or omissions of the City or its officers, elected officials, owners, employees, volunteers, agents, or its subcontractors or anyone over which the City has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the District agrees to indemnify, save harmless and defend the

City, 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 or omissions of the District or its officers, elected officials, owners, employees, volunteers, agents, or its subcontractors or anyone over which the District has a right to control.

8. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
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. Jim Whynot, Public Works Director or designee will act as liaison for the City for the Project.

Contact Information:

City of Gladstone
18595 Portland Ave.
Gladstone, Or 97027
503-479-6866
whynot@ci.gladstone.or.us

Jessica Rinner or designee will act as liaison for the District for the Project.

Contact Information:

Water Environment Services
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4551
jrinner@clackamas.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 City and District 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 City 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. District, 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.** Each Party 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. Each Party 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, each Party shall permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. 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.
- F. 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.

- G. **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.
- H. **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.
- I. **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.
- J. **No Third-Party Beneficiary.** District and City 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.
- K. **Subcontract and Assignment.** Except as specifically contemplated herein, neither Party may 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 other Party, which shall not be unreasonably withheld. A Party's consent to any subcontract shall not relieve the other Party of any of its duties or obligations under this Agreement.
- L. **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.
- M. **Survival.** All provisions in sections 7, 9, and 10 shall survive the termination of this Agreement.
- N. **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.

- O. **Time is of the Essence.** City and District agree that time is of the essence in the performance this Agreement.
- P. **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.
- Q. **Force Majeure.** Neither District nor City shall be held responsible for delay or default caused by events outside of the District or City's reasonable control including, but not limited to, fire, terrorism, riot, pandemic, epidemic, acts of God, or war. However, each Party 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.
- R. **Confidentiality.** Each Party 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 from the other Party. Each Party shall be responsible for identifying such Confidential Information to the other Party. The Parties agree to hold Confidential Information in strict confidence, using at least the same degree of care that it 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. The Parties acknowledge that each Party is subject to the Oregon Public Records law, and is responsible for responding to any public records request it receives, to the extent that it has access to the records requested, including responsibility for evaluating and appropriately handling the confidentiality of the information. In the event a Party receives a public records request for Confidential Information obtained in the course of performing its responsibilities under this Agreement, the Party receiving the request shall notify the other Party in time sufficient to permit the other Party to intervene or otherwise protect its interest.

[Signature Page Follows]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

City of Gladstone



Authorized Signatory
11/17/20

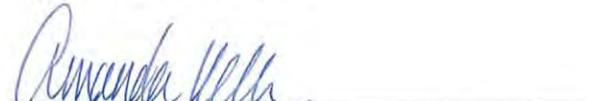
Date

Water Environment Services

Chair

Date

Approved as to Form:



County Counsel

Exhibit A
STATEMENT OF WORK



**WATER ENVIRONMENT SERVICES
PERSONAL SERVICES CONTRACT
Contract # 3168**

This Personal Services Contract (this "Contract") is entered into between **Leeway Engineering Solutions, LLC** ("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 **September 1, 2021**.
2. **Scope of Work.** Contractor shall provide the following personal services: **Mt. Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Project, Tasks 1 and 2** ("Work"), further described in the Mutually Agreed upon Scope of Work, **Exhibit A**. This Contract is authorizing the first two tasks outlined in the Request For Proposals ("RFP") for this project during this initial phase. Any additional tasks beyond 1 and 2 identified in the RFP will be authorized in the future through an amendment in accordance with the terms of this Contract.
3. **Consideration.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed one million, ninety thousand and fifty two dollars (**\$1,090,052.00**), 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 A.
4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made 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: **Jessica Rinner**.

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: Rob Lee Phone: 503-828-7542 Email: rob.lee@leewayengineeringsolutions.com	Administrator: Jessica Rinner Phone: 503-742-4551 Email: jrinner@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, or from any act, omission, or neglect 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. Contractor shall provide proof of said insurance and name the District and Clackamas County as an additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

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

This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it. 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; (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; and (F) 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, 11, 13, 14, 16, 21 and 27, 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.

Leeway Engineering Solutions, LLC

 07/01/2020

Authorized Signature Date

Robert Lee / Principal Owner

Name / Title (Printed)

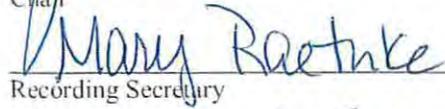
1616703.94 DLLC / Oregon

Oregon Business Registry #

Water Environment Services



Chair



Recording Secretary

7-16-2020

Date

Approved as to Form:

 7/7/2020

County Counsel

Date

EXHIBIT A
MUTUALLY AGREED UPON SCOPE OF WORK



Attachment A

Scope of Services

Clackamas Water Environment Services, Clackamas County, Oregon

Mount Talbert and Gladstone Infiltration and Inflow Source Identification and Rehabilitation Program

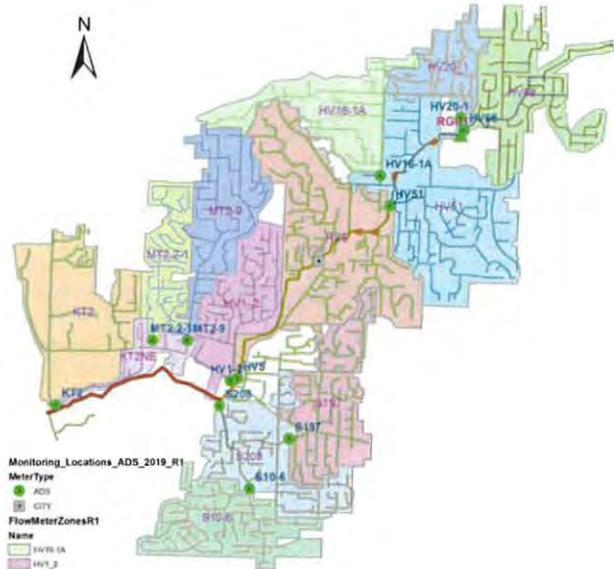
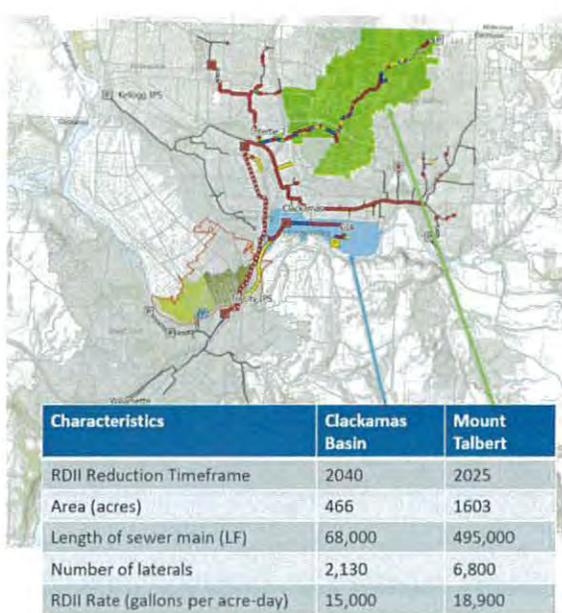
Background

In partnership with member cities, the District provides wastewater conveyance and treatment services to over 190,000 people in Clackamas County. The member cities, Gladstone, Milwaukie, Oregon City and West Linn, manage the collection systems within their jurisdictional boundaries and pay fees for downstream conveyance and treatment. The District owns and operates 23 wastewater pumping stations and 340 miles of sewer pipes. The District recently completed a Collection System Master Plan (“CSMP”) (Jacobs Engineering, 2019). The CSMP identifies 19 areas with excessive rates of I/I into the sewer system that can be cost-effectively reduced and recommends reducing the I/I in these areas by 65% over the next 20 years.

Clackamas Water Environment Services (District) is in the early stages of developing an infiltration and inflow (I/I) program aimed at reducing peak wet-weather flows into their wastewater collection system and treatment facilities.

This project is focused on identifying I/I sources with the ultimate goal of achieving 65% reduction of peak wet-weather I/I in two areas within the District’s service area; the Mount Talbert area and a portion of the City Gladstone (Gladstone), one of the District’s member communities that contributes wastewater flows to the District’s Tri-Cities Water Resources Recovery Facility (WRRF).

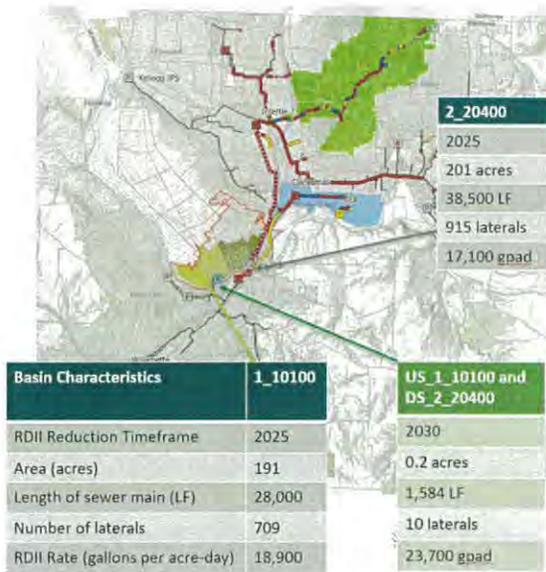
The figures and table below illustrate the Mount Talbert and Gladstone areas. Flow monitoring work previously conducted by the District utilized a combination of temporary and permanent flow meters to subdivide the Mount Talbert area into 13 smaller subbasins.



Site/ Basin	Pipe Diameter (in)	Means of Determining Net Basin Flow	Net Tributary Area (acres)	Net Tributary Pipe Length (feet)	Gross ADDF Weekday (mgd)	Net ADDF Weekday (mgd)
CLA HV1-2	8		156	24,240	0.08	0.08
CLA HV16-1A	8		177	23,907	0.09	0.09
CLA HV20-1	8		106	17,104	0.07	0.07
CLA HV5	18	+HV5 - HV51	407	54,515	0.54	0.16
CLA HV51	15	+HV51 - HV16-1A - HV20-1 - HV68	370	46,087	0.39	0.10
CLA HV68	12		224	36,419	0.13	0.13
CLA KT2	8		264	23,426	0.21	0.21
CLA KT2NE	10	+KT2NE - MT2-2-1 - MT2-9	53	8,402	0.39	0.20
CLA MT2-2-1	8		115	20,722	0.09	0.09
CLA MT2-9	8		185	27,560	0.10	0.10
CLA S10-6	8		192	32,915	0.12	0.12
CLA S197	8		196	33,064	0.15	0.15
CLA S208	12	+S208 - S10-6 - S197	186	28,890	0.41	0.13

A total of 13 temporary flow meters and 2 District permanent flow meters (HV 36 and MT 240) have data available for analysis.

The City of Gladstone area tributary to the Gladstone PS (and therefore to the Tri City WRRF) has been divided into 3 subbasins and is shown in the figure below. These 3 subbasins are included in this project.



Leeway Engineering Solutions, LLC (LW) shall provide services to detect sources of I/I, evaluate improvement options, and recommend priority improvements to the collection systems in these two areas.

Project Team

Leeway Engineering Solutions (LW) shall serve as the Prime Consultant for the Project, utilizing the following key staff:

Key Staff	Role
Rob Lee, PE, PMP	Project Manager
Yarrow Murphy, PE	Data Analysis Lead

The following Subconsultant firms shall support LW:

Subconsultant	Key Staff	Role
Kennedy Jenks	Dean Wood	Principal in Charge
Kennedy Jenks	Kathy Fretwell	Quality Control Manager
Kennedy Jenks	Dana Devin-Clarke, PE	Field Work Lead
Kennedy Jenks	Jana Otero, EIT	Field Work Support
Kennedy Jenks	Patrick Finn, EIT	Field Work Support
Smoke-testing firm (TBD)	TBD	Inflow source detection
CCTV firm (TBD)	TBD	Pipe and manhole inspection and dye testing

District-Provided Services

This scope assumes that the District will be acting on behalf of the City of Gladstone. The City of Gladstone will provide services via a separate agreement with the District.

- District will provide known GIS files relevant to the project
- District will provide available data within 10 business days of request
- District staff will provide institutional or operational knowledge of the system’s response to wet-weather

- District staff with knowledge of system maintenance and operations will be available to participate in staff interviews with advance notice.
- District will identify any known capacity or O&M-related restrictions in the basins that might hinder I/I investigations
- District and City of Gladstone staff, as appropriate, will attend workshops and meetings
- District will review deliverables within 10 business days of receiving them from the Consultant team
- District will lead public outreach and notification efforts (web-based notifications)
- District will provide guidance on interactions with property owners, including providing available past examples of field work public notifications

General Assumptions

- Tasks 3 and 6 will occur only if an Intergovernmental Agreement between the District and the City of Gladstone is executed.
- Required field investigations per basin are assumed using information provided as part of the Request for Proposals and shall be refined during Tasks 2 and 3 (Data Review) of the project
 - Costs for specialized subconsultants are assumed on a unit cost basis (i.e., per linear foot) and an assumed subbasin length of pipe for basins assumed to require those inspection techniques
- All Technical Memoranda (TM) shall be provided in MS Word and PDF format
- Hard copies of the draft and final TMs are not required and shall not be provided
- Deliverables, meeting/workshop agendas, and other materials shall be provided no less than five (5) working days prior to the meeting/workshop
- Meeting/workshops shall be conducted at District facilities or virtually using video conferencing.
- Meeting minutes shall be provided within five (5) working days following meeting/workshops.
- Project duration of 13 months.

Scope of Work

The Scope of Work for the Project is divided into the following tasks:

Task 1	Project Management
Task 2	Mt Talbert Existing Data Review and SSES Planning
Task 3	Gladstone Existing Data Review and SSES Planning
Task 4	Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)
Task 5	Mt Talbert Field Work and I/I Source Investigation
Task 6	Gladstone Field Work and I/I Source Investigation
Task 7	Quality Management

Task 1. Project Management

Objective: Provide and perform project administration and management activities required for Project completion.

Activities: This Task includes technical and financial management, including the following:

- Project Management Plan – develop and submit a Project Management Plan (PMP) including scope, work plan, budget, schedule, and staffing plan.
- Project Monitoring – track and manage Project scope, schedule, and budget, including monthly forecasts of Earned Value and Estimate-to-Complete.
- Project Reporting and Invoicing – prepare monthly progress reports to be submitted with invoices. Monthly progress reports shall include task level budget status.
- Meetings – planned meetings include:
 - Kickoff meeting
 - Regularly scheduled monthly progress calls with District Project Manager

Deliverables: Progress updates, project status reports, variance reports, decision log and schedule updates submitted monthly, meeting agendas, meeting materials, meeting minutes, and monthly invoices

Assumptions: This Task assumes the following assumptions:

- Kickoff shall be held at District offices or by teleconference

Task 2. Mt Talbert Existing Data Review and SSES Planning

Objective: Gather and review available existing data for the Mount Talbert area to develop and present recommendations for the sanitary sewer evaluation survey (SSES) plan.

Activities: This Task includes the following activities:

- Conduct staff interviews – Consultant shall create maps and conduct interviews with District staff who are knowledgeable with the facilities and their problem areas.
- Develop Data Request and Gather Available Existing Data – The data required will include, but may not be limited to the following:
 - District GIS files for collection system and other background data
 - Flow monitoring data
 - CCTV or smoke-testing data conducted in the last 5 years
 - Lucity or other work order information pertaining to any repairs, maintenance activities, or reported overflows within the last 10 years
- Review Flow Data – Review flow data to characterize each subbasin's response to wet-weather events. Conduct hydrograph analysis on all temporary and permanent flow meter to identify suspected sources of I/I and recommend investigation techniques. Hydrograph analysis shall include three (3) discrete wet-weather events during the past monitoring period (raw data) plus hydrographs generated from the District's CSMP model under peak wet-weather flow conditions.
- Develop Recommendations for SSES Field Work – Develop recommendations for SSES field work from a suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field

subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.

- Private Property Outreach and Access Planning – Consultant shall develop and provide technical information in support of the public outreach required for private property outreach and access.
- TM#1-A, Mt. Talbert Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the Mt. Talbert Data Review and SSES Recommendations, including recommended investigation tools, workplan, costs, and public outreach requirements by subbasin.

Deliverables: Deliverables completed under this Task shall include:

- Draft and Final TM#1-A

Assumptions: This Task assumes the following:

- Task 2 shall be implemented concurrently with Task 3

Task 3. Gladstone Existing Data Review and SSES Planning

Objective: Gather and review available existing data to develop and recommend the sanitary sewer evaluation survey (SSES) plan for Gladstone basins 1_10100, 2_20400, and US_1_10100 and DS_2_20400.

Activities: This Task includes the following activities:

- Conduct staff interviews – Consultant shall create maps and conduct interviews with Gladstone staff who are knowledgeable with the facilities and their problem areas.
- Develop Data Request and Gather Available Existing Data – The data required will include, but may not be limited to the following:
 - City of Gladstone GIS for collection system and other background data
 - Flow monitoring data
 - CCTV or smoke-testing data conducted in the last 5 years
 - Records of work completed in last 10 years
- Review Data – Review flow data to characterize each subbasin's response to wet-weather events. Conduct hydrograph analysis on all temporary and permanent flow meter to identify suspected sources of I/I and recommend investigation techniques. Hydrograph analysis shall include three (3) discrete wet-weather events during the past monitoring period (raw data) plus data generated from the City's SSMP model under peak wet-weather flow conditions.
- Develop Recommendations for SSES Field Work – Develop recommendations for SSES field work from a suite of SSES tools including smoke testing, CCTV and manhole inspections, dye testing, trunk walks and trunk manhole inspections. Field subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.
- Private Property Outreach and Access Planning – The City of Gladstone will lead the private property outreach and communication tasks. Consultant shall develop and

provide technical information in support of the City of Gladstone developing public outreach requirements prior to implementing the SSES Plan.

- o TM#1-B, Gladstone Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the City of Gladstone Data Review and SSES Recommendations, including recommended investigation tools, workplan, anticipated costs, and public outreach requirements by subbasin.

Deliverables: Deliverables completed under this Task shall include:

- o Draft and Final TM#1-B

Assumptions: This Task assumes the following:

- o Task 3 shall be implemented concurrently with Task 2

Task 4. Mt. Talbert HV68 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)

Objective: This Task shall further delineate the two largest subbasins in the Mt. Talbert area by flow metering and field work to investigate and identify I/I sources. This Task shall require District authorization if the District determines it to be necessary resulting from the findings of Task 2.

Activities: This Task includes the following activities:

- o Micro-metering – Consultant shall delineate subbasins HV68 and HV5 into smaller basins (of ideally 25,000 LF of sewer or less), select appropriate metering locations, and subcontract with a flow metering firm to install and monitor flows during the wet season (November 2020 to Feb 2021). For the purposes of budgeting, 2 meters in HV68 and 3 meters in HV5 for 5 months is assumed at \$3500 per meter per month.
- o Flow Data Review – Consultant shall conduct a review of collected information to characterize each subbasin's response to wet-weather events. Hydrograph analysis shall be conducted to develop recommendations on the suspected sources of I/I and the corresponding investigation techniques. Hydrograph analysis shall include 5 different wet-weather events during the monitoring period.
- o Develop Recommendations for SSES Field Work – Consultant shall develop recommendations using the suite of SSES tools including smoke testing, CCTV and manhole inspections; dye testing, trunk walks and trunk manhole inspections. Field subcontractors and the internal team shall be solicited for cost estimates and workload. Investigation options shall be summarized by benefits, costs and risks for each option and subbasin, with a recommended plan and schedule.
- o TM#1-A-1, Mt. Talbert HV68 and HV5 Sanitary Sewer Evaluation Study Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the HV68 and HV5 Data Review and SSES Recommendations, including recommended investigation tools, workplan, costs, and public outreach requirements by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- o Micro-metering plan
- o Flow monitoring results and report

- Draft and Final TM#1-A-1

Assumptions: This Task assumes the following:

- District will provide access to flow monitoring locations.
- District will clean pipes upstream and downstream of flow monitoring locations.

Task 5. Mt. Talbert Field Work and I/I Source Identification

Objective: To conduct field work identified in Task 2 to investigate and identify I/I sources in the Mount Talbert area and use the results of the investigations to recommend future system improvements to cost-effectively remove sources of I/I.

Activities: This Task includes the following activities:

- Finalize SSES Workplan – Consultant shall finalize the SSES Workplan, procure and contract with field work subconsultants, develop schedule, and coordinate public notifications with the District. A data management plan shall be developed and in place during the field investigations. This plan shall be used to manage and review field data on an on-going basis as it is collected and in proper format, such as CCTV quality control checks of PACP coding and smoke-testing findings.
- Implement SSES Workplan Field Investigations – Consultant shall implement the finalized and approved recommendations from Task 2, Mt. Talbert Existing Data Review and SSES Planning. A 2-week look ahead schedule shall be provided weekly as part of the implementation. The following investigations are anticipated:
 - **Stream corridor walks** shall be conducted for the entire Mt. Talbert basin and document findings. Leeway and Kennedy Jenks staff shall self-perform this effort.
 - **Smoke testing** shall be conducted for basins that indicate a high peak inflow potential.
 - **CCTV** shall be conducted for basins that indicate a high peak infiltration potential.
 - **Dye testing** shall be conducted during CCTV investigations to validate smoke testing results.
- Public Notification – Consultant field teams shall provide individual notifications to property owners during field activities. Notifications shall include an advance door hangers (developed in Task 2) 24 to 48 hours in advance of private property impacts (e.g., smoke-testing, dye-testing, access through sewer easements, etc.) and a second door hanger left upon completion of the field activities. No door hangers shall be left for CCTV activities conducted solely within the ROW.
- SSES Documentation and Data Management – Consultant shall compile and review findings of field investigations. All CCTV with PACP Grade 4 or 5 defects (or equivalent, per engineering judgment) shall be reviewed. Data shall be provided to the District in geodatabase format. All I/I source findings (e.g., smoke-emissions, CCTV data, manhole defects, etc.) shall be tied to an existing District GIS asset (e.g., sewer main, catch basin, tax parcel, manhole, etc.). Data shall be provided as a GIS geodatabase.
- Develop Recommendations for I/I Source Removal – Consultant shall develop a list of recommendations, priority, and costs for addressing the I/I sources. Costs shall be developed at an accuracy per AACE Level 3 estimates.

- TM#2-A, Mt. Talbert SSES Findings and Rehab Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the field investigation findings and project recommendations by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Geodatabase of SSES Results
- Geodatabase of recommended projects
- Draft and Final TM#2-A

Assumptions: This Task assumes the following:

- Field investigations are based on the following estimated footages and unit costs:
 - **Stream corridor walks** shall be conducted for the entire Mt. Talbert basin. Approximately 8 days of stream walks shall be conducted by a 2-person team.
 - **Smoke testing** shall be conducted for 48,000 linear feet of sewer mains in 3 subbasins (KT2NE, KT2, HV20-1). A budgetary cost of \$1.75 per linear foot is assumed for the smoke-testing subcontractor. Initial review of temporary flow metering data indicate the following basins shall have smoke testing conducted: KT2NE, KT2, HV20-1. Upon completion of Task 2 more subbasins may be recommended for smoke testing.
 - **CCTV** shall be conducted for 72,000 linear feet of sewer mains in 4 subbasins (KT2NE, KT2, HV16-1A, HV20-1). A budgetary cost of \$2.50 per linear foot is assumed for cleaning and CCTV subcontractor. Initial review of temporary flow metering data indicate the following basins shall have CCTV inspections conducted: KT2NE, KT2, HV16-1A, HV20-1. Upon completion of Task 2 more subbasins may be recommended for CCTV inspection.
 - **Dye testing** shall be conducted for 5,000 linear feet of sewer mains in 3 subbasins (KT2NE, KT2, HV20-1). A budgetary cost of \$1.50 per linear foot is assumed for the dye-testing subcontractor. This footage may change after the completion of Task 2.
- Field investigations in Task 5 shall be conducted concurrently with field work in Task 6.
- 80 video segments (i.e., 25% of the sewer mains inspected) are assumed to have PACP Grade 4/5 defects and shall require review.
- Private property I/I source removal shall be included in recommendations and clearly identified as private property.

Task 6. Gladstone Field Work and I/I Source Identification

Objective: To conduct field work identified in Task 3 to investigate and identify I/I sources in the City of Gladstone area and use the results of the investigations to recommend future system improvements to cost-effectively remove sources of I/I.

Activities: This Task includes the following activities:

- Finalize SSES Workplan – Consultant shall finalize the SSES Workplan, procure and contract with field work subconsultants, develop schedule, and coordinate public notifications with the District and the City of Gladstone. A data management plan shall be developed and in place during the field investigations. This plan shall be used to manage and review field data on an on-going basis as it is collected and in proper format, such as CCTV quality control checks of PACP coding and smoke-testing findings.

- Implement SSES Workplan Field Investigations – Consultant shall implement the finalized and approved recommendations from Task 3, Gladstone Existing Data Review and SSES Planning. A 2-week look ahead schedule shall be provided weekly as part of the implementation. The following investigations are anticipated:
 - **Smoke testing** shall be conducted for basins that indicate a high peak inflow potential.
 - **CCTV** shall be conducted for basins that indicate a high peak infiltration potential.
 - **Dye testing** shall be conducted during CCTV investigations to validate smoke testing results.
- Public Notification – Consultant field teams shall provide individual notifications to property owners during field activities. Notifications shall include an advance door hanger (developed in Task 3) 24 to 48 hours in advance of private property impacts (e.g., smoke-testing, dye-testing, access through sewer easements, etc.) and a second door hanger left upon completion of the field activities. No door hangers shall be left for CCTV activities conducted solely within the ROW.
- SSES Documentation and Data Management – Consultant shall compile and review findings of field investigations. All CCTV with PACP Grade 4 or 5 defects (or equivalent, per engineering judgment) shall be reviewed. Data shall be provided to the District in geodatabase format. All I/I source findings (e.g., smoke-emissions, CCTV data, manhole defects, etc.) shall be tied to an existing District GIS asset (e.g., sewer main, catch basin, tax parcel, manhole, etc.). Data shall be provided as a GIS geodatabase.
- Develop Recommendations for I/I Source Removal – Consultant shall develop a list of recommendations, priority, and costs for addressing the I/I sources. Costs shall be developed at an accuracy per AACE Level 3 estimates.
- TM#2-B, Gladstone SSES Findings and Rehab Recommendations – Consultant shall develop a TM that summarizes and documents the findings of the field investigation findings and project recommendations by subbasin.

Deliverables: Deliverables developed under this Task shall include:

- Geodatabase of SSES Results
- Geodatabase of recommended projects
- Draft and Final TM#2-B

Assumptions: This Task assumes the following:

- Field investigations are based on the following estimated footages and unit costs:
 - **Smoke testing** shall be conducted for 68,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for smoke testing. A budgetary cost of \$1.75 per linear foot is assumed for the smoke-testing subcontractor.
 - **CCTV** shall be conducted for 68,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for smoke testing. A budgetary cost of \$2.50 per linear foot is assumed for cleaning and CCTV subcontractor.
 - **Dye testing** shall be conducted for 7,000 linear feet of sewer mains in 3 subbasins (1_10100, 2_20400, and US_1_1_10100 and DS_2_2_20400) is assumed for

confirmation dye testing. A budgetary cost of \$1.50 per linear foot is assumed for the dye-testing subcontractor.

- o Field investigations in Task 6 shall be conducted concurrently with field work in Task 5.
- o 75 video segments (i.e., 25% of the sewer mains inspected) are assumed to have PACP Grade 4/5 defects and shall require review.
- o Private property I/I source removal shall be included in recommendations and clearly identified as private property.

Task 7. Quality Management

Objective: To develop and implement a plan that focuses on and emphasizes quality throughout the execution of the Project.

Activities: This Task includes the following activities:

- o Develop and follow a Quality Management Plan (QMP) for the project to be included in the PMP.
- o Conduct quality reviews of all technical analyses, presentations and minutes, TMs, subconsultant deliverables, etc. and address review comments prior to submission in accordance with the QMP.
- o For major work products (Technical Memoranda) develop a Comment Log to document District comments and Consultant responses.

Deliverables: Deliverables completed under this Task shall include:

- o Quality Management Plan
- o Comment Log

Assumptions: This Task assumes the following:

- o None

Level of Effort Estimate

LW proposes to complete this work as detailed above on a time and expenses basis summarized on the attached Level of Effort estimate. This “not-to-exceed” amount is based on this scope of work and shall not be exceeded without approval and written authorization by the District.

EXHIBIT B
FEE SCHEDULE

**MT. TALBERT AND GLADSTONE I/I SOURCE IDENTIFICATION AND REHABILITATION PROJECT
CLACKAMAS COUNTY WATER ENVIRONMENT SERVICES
PROPOSED LEVEL OF EFFORT**

	Leeway		Hours	Labor	Expenses	Subconsultants										Subconsultant Multiplier	Subconsultant Total with Markup	Total	
	Principal Engineer RKL \$190.00	Professional Engineer YMM \$180.00				Kennedy Jenks DDC \$140.00	Kennedy Jenks JO/PF \$111.00	Kennedy Jenks MH/RP \$185.00	Kennedy Jenks DW/KF \$230.00	Kennedy Jenks Admin \$98.00	Kennedy Jenks Expenses	Kennedy Jenks Subtotal	Smoke-Testing Firm	CCTV and Dye-Testing Firm	Flow Monitoring				
Task 1 - Project Management																			
Project Management Plan	8	12	20	\$ 3,440	\$ -	0	0	0	0	8	0	\$ -	\$ 1,840				1.05	\$ 1,932	\$ 5,372
Project Monitoring	24	7	30	\$ 5,505	\$ -	12	0	0	0	0	0	\$ -	\$ 1,680				1.05	\$ 1,764	\$ 7,262
Project Reporting and Invoicing	18	20	38	\$ 6,540	\$ 69	4	0	0	18	0	0	\$ -	\$ 4,700				1.05	\$ 4,935	\$ 11,544
Task 1 Subtotal	50	38	88	\$ 15,485	\$ 69	16	0	0	26	0	\$ -	\$ 8,220	\$ -	\$ -	\$ -			\$ 8,631	\$ 24,185
Task 2 - Mt Talbert Existing Data Review and SSES Planning																			
Conduct Staff Interviews	6	9	15	\$ 2,580	\$ 35	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,615
Develop Data Request and Gather Existing Data	4	8	12	\$ 2,040	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,040
Review Data	20	40	60	\$ 10,200	\$ -	20	40	0	0	0	0	\$ -	\$ 7,240				1.05	\$ 7,602	\$ 17,802
Develop SSES Recommendations	10	18	28	\$ 4,780	\$ -	14	14	0	0	0	0	\$ -	\$ 3,514				1.05	\$ 3,690	\$ 8,470
Private Property Outreach and Access Planning	6	6	12	\$ 2,100	\$ -	4	4	0	0	0	0	\$ -	\$ 1,004				1.05	\$ 1,054	\$ 3,154
TM#1-A	12	32	44	\$ 7,400	\$ -	2	0	0	2	0	0	\$ -	\$ 740				1.05	\$ 777	\$ 8,177
Task 2 Subtotal	58	113	171	\$ 29,100	\$ 35	40	58	0	2	0	\$ -	\$ 12,498	\$ -	\$ -	\$ -			\$ 13,123	\$ 42,257
Task 3 - Gladstone Existing Data Review and SSES Planning																			
Conduct Staff Interviews	6	9	15	\$ 2,580	\$ 35	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,615
Develop Data Request and Gather Existing Data	4	8	12	\$ 2,040	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 2,040
Review Data	7	14	21	\$ 3,570	\$ -	12	12	0	0	0	0	\$ -	\$ 3,012				1.05	\$ 3,163	\$ 6,733
Develop SSES Recommendations	10	18	28	\$ 4,780	\$ -	14	14	0	0	0	0	\$ -	\$ 3,514				1.05	\$ 3,690	\$ 8,470
Private Property Outreach and Access Planning	6	6	12	\$ 2,100	\$ -	4	4	0	0	0	0	\$ -	\$ 1,004				1.05	\$ 1,054	\$ 3,154
TM#1-B	12	32	44	\$ 7,400	\$ -	2	0	0	2	0	0	\$ -	\$ 740				1.05	\$ 777	\$ 8,177
Task 3 Subtotal	45	87	132	\$ 22,470	\$ 35	32	30	0	2	0	\$ -	\$ 8,270	\$ -	\$ -	\$ -			\$ 8,684	\$ 31,188
Task 4 - Mt. Talbert HV66 and HV5 2021 Additional Flow Metering, Data Review, and SSES Planning (Owner-Authorization Required)																			
Micro-Metering	8	8	16	\$ 2,800	\$ 55	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ -
Flow Data Review and Hydrograph Analysis	12	30	42	\$ 7,080	\$ -	0	0	0	0	0	0	\$ -	\$ -	\$ 87,500			1.05	\$ 91,875	\$ 94,730
SSES Field Work Recommendations	10	18	28	\$ 4,780	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 4,780
Private Property Outreach and Access Planning	12	24	36	\$ 6,120	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 6,120
TM#1-A-1	12	24	36	\$ 6,120	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 6,120
Task 4 Subtotal	42	80	122	\$ 20,780	\$ 55	0	0	0	0	0	\$ -	\$ -	\$ -	\$ 87,500	\$ -	\$ -		\$ 91,875	\$ 112,710
Task 5 - Mt Talbert Field Work and I/I Source Identification																			
SSES Workplan and Data Management Plan	12	6	18	\$ 3,240	\$ -	12	0	0	0	0	0	\$ -	\$ 1,680				1.05	\$ 1,784	\$ 5,004
Implement Field Investigations	32	0	32	\$ 6,080	\$ -	32	0	0	0	0	0	\$ 800	\$ 5,280				1.05	\$ 5,544	\$ 11,824
Stream Corridor Walks	72	0	72	\$ 13,680	\$ 356	8	72	0	0	0	0	\$ -	\$ 9,112				1.05	\$ 9,568	\$ 23,604
Smoke Testing	54	0	54	\$ 10,260	\$ 217	40	60	0	0	0	0	\$ -	\$ 12,260	\$ 64,000			1.05	\$ 101,073	\$ 111,550
CCTV	29	0	29	\$ 5,510	\$ 183	20	60	0	0	0	0	\$ -	\$ 9,460	\$ 180,000			1.05	\$ 198,933	\$ 204,626
Dye Testing	9	0	9	\$ 1,710	\$ 45	4	24	0	0	0	0	\$ -	\$ 3,224	\$ 7,500			1.05	\$ 11,260	\$ 13,015
SSES Documentation and Data Management	16	50	66	\$ 11,040	\$ -	16	128	0	0	2	2	\$ -	\$ 16,644				1.05	\$ 17,478	\$ 28,518
Develop I/I Source Removal Recommendations	24	13	37	\$ 6,540	\$ -	6	14	10	6	2	2	\$ -	\$ 5,820				1.05	\$ 6,111	\$ 12,751
TM#2-A	16	40	56	\$ 9,440	\$ -	12	32	12	4	6	6	\$ -	\$ 8,960				1.05	\$ 9,408	\$ 18,848
Task 5 Subtotal	264	109	373	\$ 67,600	\$ 800	150	390	22	10	10	\$ 800	\$ 70,760	\$ 64,000	\$ 187,500	\$ -			\$ 361,137	\$ 429,537
Task 6 - Gladstone Field Work and I/I Source Identification																			
SSES Workplan and Data Management Plan	12	6	18	\$ 3,240	\$ -	0	0	0	0	0	0	\$ -	\$ -				1.05	\$ -	\$ 3,240
Implement Field Investigations	32	0	32	\$ 6,080	\$ -	32	0	0	0	0	0	\$ 800	\$ 5,280				1.05	\$ 5,544	\$ 11,824
Smoke Testing	54	0	54	\$ 10,260	\$ 217	40	68	0	0	0	0	\$ -	\$ 13,148	\$ 119,000			1.05	\$ 138,755	\$ 149,232
CCTV	29	0	29	\$ 5,510	\$ 183	20	68	0	0	0	0	\$ -	\$ 10,348	\$ 170,000			1.05	\$ 189,365	\$ 195,058
Dye Testing	9	0	9	\$ 1,710	\$ 45	4	24	0	0	0	0	\$ -	\$ 3,224	\$ 10,500			1.05	\$ 14,410	\$ 16,165
SSES Documentation and Data Management	12	40	52	\$ 8,680	\$ -	12	120	0	0	2	2	\$ -	\$ 15,196				1.05	\$ 15,956	\$ 24,636
Develop I/I Source Removal Recommendations	20	12	32	\$ 5,720	\$ -	6	14	10	6	2	2	\$ -	\$ 5,820				1.05	\$ 6,111	\$ 11,831
TM#2-B	16	40	56	\$ 9,440	\$ -	12	32	12	4	6	6	\$ -	\$ 8,960				1.05	\$ 9,408	\$ 18,848
Task 6 Subtotal	184	98	282	\$ 50,640	\$ 444	126	326	22	10	10	\$ 800	\$ 61,976	\$ 119,000	\$ 180,500	\$ -			\$ 379,550	\$ 430,634
Task 7 - Quality Management																			
Develop Quality Management Plan	12	6	18	\$ 3,240	\$ -	4	0	0	4	0	0	\$ -	\$ 1,480				1.05	\$ 1,554	\$ 4,794
Perform Quality Management	24	16	40	\$ 7,120	\$ -	4	4	4	24	0	0	\$ -	\$ 7,264				1.05	\$ 7,627	\$ 14,747
Task 7 Subtotal	36	22	58	\$ 10,360	\$ -	8	4	4	28	0	\$ -	\$ 8,744	\$ -	\$ -	\$ -			\$ 9,181	\$ 19,541
TOTAL - ALL TASKS	679	647	1226	\$ 216,435	\$ 1,437	372	808	48	78	20	\$ 1,600	\$ 172,148	\$ 203,000	\$ 368,000	\$ 87,500			\$ 872,180	\$ 1,090,052



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Contract between Water Environment Services and
Hach Company to provide Flow Meters**

Purpose/Outcome	Approve the attached 3 year Goods and Services Ordering Contract with Hach Company and authorizes the procurement office to place Purchase Orders against said contract, up to the total not-to-exceed amount.
Dollar Amount and Fiscal Impact	Total not-to-exceed dollar value of the contract is \$283,733.80 across three years
Funding Source	Capital Improvement: 639-20100-481010-P632209
Duration	Three (3) years from date of approval
Previous Board Action/Review	Board Approved Brand Standardization on November 14, 2019
Strategic Plan Alignment	1. This project supports the WES Strategic Plan to provide Enterprise Resiliency, Infrastructure Strategy and Performance and Operational Optimization. 2. This project supports the County Strategic Plan of building a strong infrastructure that delivers services to customers.
Counsel Review	November 23, 2020 A.K.
Procurement Review	Was the item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no
Contact Person	Jessica Rinner
Contract No.	3166

BACKGROUND:

Currently WES operates 340 miles of sewer pipe across Clackamas County. The last two iterations of flow meter upgrade purchases have been awarded to Hach via a competitive process. Now that WES has a substantial amount of Hach flow meters, and currently uses Hach auto-samplers, the business decision has been made to standardize its flow-meter upgrades and future auto-sampler purchases to this brand.

The Board approved WES standardized on Hach flow meters and auto samplers on November 14, 2019. The standardization provides several benefits. By consolidating, flowmeter and auto-sampler data will be able to be stored/accessed through one software/report system, which eliminates the inefficiency of using multiple systems for the same functions. Standardizing with Hach is anticipated to reduce costs for training, support, inventory and maintenance.

Additionally, Hach equipment is available through multiple resellers, allowing for adequate competition in the marketplace.

This agreement is for the purchase of flow meters from Hach over the next three years.

PROCUREMENT PROCESS:

Invitation to Bid #2019-70a was posted to ORPIN on June 04, 2020 and closed on June 22, 2020. Only one Bid was received from Hach Company. Upon a thorough review it was determined that the Bid was in full compliance with the requirements of the ITB. The Bid was approved by Water Environment Services and a contract was drafted, reviewed by County Counsel and routed to the Vendor for signature.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached 3 year Goods and Services Ordering Contract with Hach Company and authorizes the procurement office to place any Purchase Orders against said contract, up to the total not to exceed amount.

Respectfully submitted,

Greg Geist
Director, WES

Placed on the _____ Agenda by the Procurement Division.



GOODS AND SERVICES CONTRACT Contract #3166

This Goods and Services Contract (this “Contract”) is entered into between Hach Company (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing Hach Flow Meters and Loggers.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until August 30, 2023. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in ITB 2019-70a Flow Monitoring Meter Ordering Contract issued June 04, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit “A”, and the Contractor’s Bid attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representative for this contract is: **Jessica Rinner**, JRinner@clackamas.us.

This Contract is on an “on-call” basis for the purchase of goods.

The Contractor agrees to provide the products to the District. When the District wishes the Contractor to perform the Work, the District will submit an official District Purchase Order (“PO”) detailing the items to be ordered, and the total compensation, pursuant to the fee schedule set forth in this Contract. Only the specific items listed within the fee schedule may be ordered under this Contract. The Contractor may not provide the requested items until the District Purchase Order has been executed and received. In the event a delivery authorized under the District Purchase Order extends beyond the expiration of this Contract, the District Purchase Order shall remain in effect under the terms of this Contract until the completion of the order.

No Purchase Order shall modify or amend the terms and conditions of this Contract. For each authorized PO, a specific department representative shall be identified for coordination of delivery and payment on the PO itself.

III. COMPENSATION

- 1. PAYMENT.** The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed two hundred eighty-three thousand seven hundred thirty-three dollars eighty cents **\$283,733.80** for all Purchase Orders placed against this Contract. Consideration rates are on a time & materials basis in accordance with the rates and costs specified in Exhibit B. All rates specified within Exhibit B are firm fixed through the entire three year term of this contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No

If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.

3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the District’s Representative at: wes-procurement@co.clackamas.or.us

IV. CONTRACT PROVISIONS

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

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

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

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

obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

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

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between 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.

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

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

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve 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; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the 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; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

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

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence,

with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the District and 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 Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

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

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employee's additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

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

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

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

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

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

that extent.

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

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of 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 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 the 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.

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

A. Performance Warranty. Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.

B. Service Warranty. Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

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

16. SEVERABILITY. If any term or provision of this Contract is declared by a court of competent

jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract, by operation of law or otherwise, without obtaining prior written approval from the District. 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 section and Sections 1, 8, 13, 15, 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. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

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

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle 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, 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 District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District 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 District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by

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

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

22. 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.

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

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

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

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

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

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

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

30. 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 District 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 District accepts no responsibility for performance by either the Contractor or such other agency using this Contract. With such condition, the District 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

EXHIBIT A

2019-70a ITB Flow Monitoring Meter Ordering Contract

EXHIBIT B
Contractor Bid