



AGENDA

Thursday, January 31, 2013 - 10:00 AM
Board of County Commissioners Business Meeting

Beginning Board Order No. 2013-02

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance
- Approval of Order of Agenda

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

III. DISCUSSION ITEMS *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

~NO DISCUSSION ITEMS SCHEDULED

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

A. Health, Housing & Human Services

1. Approval of a Behavior Health Services Agreement with James L. Born, PsyD (Mt. Hood Counseling Service) for Outpatient Mental Health Services – Behavioral Health

B. Department of Transportation & Development

1. Approval of an Intergovernmental Agreement with Oregon City School District Regarding Installation and Maintenance of two Radar Speed Signs on Holly Lane
2. Approval of a Contract with Farline Bridge, Inc. for the Salmon River (Arrah Wanna Blvd.) Bridge Replacement Project - Purchasing

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

D. Department of Emergency Management

1. Approval of an Addendum to Current Hazard Mitigation Grant Program DR-1956-OR Intergovernmental Agreement and Delegation of Authority to Acquire Flooded Property

V. WATER ENVIRONMENT SERVICES

1. Approval of Amendment No. 1 to the Agreement to Furnish Consultant Services to Clackamas County Service District No. 1 and the Tri-City Service District for the Blue Heron Remedial Investigation/Feasibility Study, Phase 2

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

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

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

January 31, 2013

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of a Behavioral Health Services Agreement with
James L. Born, PsyD (Mt. Hood Counseling Service) for
Outpatient Mental Health Services**

Clackamas County Behavioral Health Division (CCBHD) of the Health, Housing and Human Services Department requests the approval of a renewal Behavioral Health Services Agreement with James L. Born, PsyD (Mt. Hood Counseling Service). This agreement does not contain an upper dollar limit; expenditures are controlled by CCBHD staff who pre-authorize and monitor services on an on-going basis. This agreement will be funded with Oregon Health Authority capitation funds. No County General Funds are involved. The prior agreement was reviewed and approved by the Board on December 8, 2011.

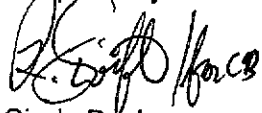
Through this agreement, CCBHD subcontracts behavioral health services for people who are Oregon Health Plan (OHP) members capitated to Clackamas County. Payment to contractor is based on current Medicaid rates.

This agreement is effective February 1, 2013 and terminates on December 31, 2013. This agreement is in a format approved by County Counsel.

Recommendation:

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

Respectfully submitted,



Cindy Becker
Director

For information on this issue or copies of attachments,
please contact Emily Zwetzig at (503)742-5318.

Healthy Families. Strong Communities.

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BEHAVIORAL HEALTH SERVICES AGREEMENT

This Behavioral Health Services Agreement is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY" and **JAMES L. BORN PsyD, MT. HOOD COUNSELING SERVICE**, hereinafter called "CONTRACTOR".

AGREEMENT

1.0 Engagement

COUNTY hereby engages CONTRACTOR to provide services as described in Exhibit B, Scope of Work, attached hereto and incorporated herein. This agreement sets forth the terms under which CONTRACTOR will contract with COUNTY to provide mental health services to Oregon Health Plan Medicaid recipients enrolled with Health Share of Oregon/Clackamas and residents of Clackamas County who are eligible for services as uninsured, indigent individuals.

2.0 Term

Services provided under the terms of this agreement shall commence **February 1, 2013**. This agreement shall terminate **December 31, 2013** unless terminated by one or both parties as provided for below. This agreement may be renewed annually and amended by mutual written consent of both parties.

3.0 Compensation and Fiscal Records

3.1 Compensation. COUNTY shall compensate CONTRACTOR as specified in Exhibit C, Compensation and Payment, for satisfactorily performing contracted services. The payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, mileage, and incidentals necessary to perform the work and services.

3.2 Withholding of Contract Payments. Notwithstanding any other payment provision of this agreement, should CONTRACTOR fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding payment for cause may continue until CONTRACTOR performs required services or establishes to COUNTY'S satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CONTRACTOR.

3.3 Financial Records. CONTRACTOR and its subcontractors shall maintain complete and legible financial records pertinent to authorized Covered Services delivered and payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles and/or other applicable accounting guidelines such as outlined in Office of Management and Budget circulars A-87, A-122 and A-133. Financial records and supporting documents shall be retained for at least five (5) years after final payment is made under this agreement or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to CONTRACTOR were in excess of the amount to which CONTRACTOR was entitled, CONTRACTOR shall repay the amount of the excess to COUNTY.

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. CONTRACTOR shall comply with all Federal, State and local laws, rules and regulations applicable to work performed under this agreement, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, and as listed in Exhibit F, Compliance with Applicable Law, attached hereto and incorporated herein. CONTRACTOR shall comply with OAR 410-120-1380, which establishes the requirements for compliance with Section 4751 of Omnibus Budget Reconciliation Act (OBRA) 1991 and ORS 127.649, Patient Self-Determination Act.

4.2 Subcontracts. CONTRACTOR shall not enter into any subcontracts for any of the work scheduled under this agreement without obtaining prior written approval from COUNTY. CONTRACTOR shall not be

James L. Born, PsyD, Mt. Hood Counseling Services

relieved of any of CONTRACTOR's obligations hereunder by virtue of any such subcontract, and shall remain directly responsible for compliance with all the terms of this agreement.

4.3 Independent Contractor. CONTRACTOR certifies that it is an independent contractor and not an employee or agent of County, State or Federal government. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the solely the responsibility of CONTRACTOR.

4.4 Workers' Compensation. CONTRACTOR certifies that it is an insured employer for purposes of the Oregon Workers' Compensation law and maintains workers' compensation insurance as required by ORS 656.017, or qualifies for an exemption under ORS 656.126. CONTRACTOR shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

5.0 General Conditions

5.1 Indemnification. CONTRACTOR agrees to indemnify, save, hold harmless, and defend COUNTY, its officers, commissioners and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of CONTRACTOR, and CONTRACTOR's officers, agents, and employees, in performance of this agreement.

CONTRACTOR shall defend, save, hold harmless and indemnify the State of Oregon, OHA and their officers, agents and employees from and against all claims, suits, actions, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities or omissions of CONTRACTOR, or its agents or employees under this agreement.

If CONTRACTOR is a public body, CONTRACTOR's liability under this agreement is subject to the limitations of the Oregon Tort Claims Act.

5.2 Insurance. During the term of this agreement, CONTRACTOR shall maintain in force at its own expense each insurance noted below:

5.2.1 Commercial General Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall obtain, at CONTRACTOR'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, commissioners, 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 the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute it.

5.2.2 Commercial Automobile Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR shall also obtain at CONTRACTOR's expense, and keep in effect during the term of the agreement, "Symbol 1" 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.

5.2.3 Professional Liability

Required by COUNTY Not required by COUNTY

CONTRACTOR agrees to furnish COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

5.2.4 Additional Insurance Provisions. All required insurance other than Professional Liability, Workers' Compensation, and Personal Automobile Liability insurance shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

5.2.5 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 the 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.

5.2.6 Insurance Carrier Rating. Coverages provided by CONTRACTOR 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.

5.2.7 Certificates of Insurance. As evidence of the insurance coverage required by this agreement, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiring.

5.2.8 Independent Contractor Status. The service or services to be rendered under this agreement are those of an independent contractor. CONTRACTOR is not an officer, employee or agent of COUNTY as those terms are used in ORS 30.265.

5.2.9 Primary Coverage Clarification. CONTRACTOR's coverage will be primary in the event of a loss.

5.2.10 Cross Liability Clause. A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.

5.3 Governing Law; Consent to Jurisdiction. This agreement shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between COUNTY and CONTRACTOR that arises out of or relates to performance under this agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR by execution of this agreement consents to the in personam jurisdiction of said courts.

5.4 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 CONTRACTOR and COUNTY.

5.5 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 or provisions shall not be affected, and

the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

5.6 Waiver. The failure of either party to enforce any provision of this agreement shall not constitute a waiver of that or any other provision.

5.7 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 this agreement.

5.8 Oregon Constitutional Limitations. This agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with such law, are deemed inoperative to that extent.

5.9 Public Contracting Requirements. Pursuant to the requirements of ORS 279B-020 and ORS 279B.220 through 279B.335 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this agreement:

5.9.1 CONTRACTOR shall:

- a. Make payments promptly, as due, to all persons supplying to CONTRACTOR labor or materials for the performance of the work provided for in this agreement.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such CONTRACTOR or subcontractor incurred in performance of this agreement.
- c. Not permit any lien or claim to be filed or prosecuted against Clackamas County on account of any labor or material furnished.
- d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5.9.2 If CONTRACTOR fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to CONTRACTOR or a subcontractor by any person in connection with this agreement as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due CONTRACTOR by reason of this agreement.

5.9.3 CONTRACTOR shall pay employees at least time and a half for all overtime work performed under this agreement in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 and the Fair Labor Standards Act of 1938 (29 U.S.C. 201 to 209) from receiving overtime.

5.9.4 CONTRACTOR shall promptly, as due, make payment to any person or partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness and injury, to the employees of CONTRACTOR, of all sums that CONTRACTOR agrees to pay for the services and all monies and sums that CONTRACTOR collected or deducted from the wages of its employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5.10 Integration. This agreement contains the entire agreement between COUNTY and CONTRACTOR and supersedes all prior written or oral discussions or agreements.

5.11 Federal Grant Requirements. CONTRACTOR shall comply with all applicable Federal Grant Requirements pursuant to 45 CFR Parts 74, 80, 84, 91, and 95.

5.12 Disclosure. CONTRACTOR shall comply with all disclosure requirements of 42 CFR 1002.3(a); 42 CFR 422 Subpart (B); and 42 CFR 457.900(a)(2).

5.13 Advance Directives. CONTRACTOR shall maintain written notices and procedures respecting Advance Directives in compliance with 42 USC Section 1396.(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 431.107(b)(1) & (2); and 42 CFR Subpart I.

CONTRACTOR shall comply with 42 CFR Part 422.128 for maintaining written policies and procedures for Advance Directives. This includes compliance with OAR 410-120-1380 which establishes, among other requirements the requirements for compliance with Section 4751 of the Omnibus Budget Reconciliation Act of 1991 (OBRA) and ORS 127.649, Patient Self-Determination Act.

6.0 Termination

6.1 Termination Without Cause. This agreement may be terminated by mutual consent of both parties, or by either party upon ninety (90) business days notice, in writing and delivered by certified mail or in person.

6.2 Termination With Cause. COUNTY may terminate this agreement effective upon delivery of written notice to CONTRACTOR, or at such later date as may be established by COUNTY, under any of the following conditions:

6.2.1 The terms of the OHP Medicaid Demonstration Project are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding authorized by this agreement.

6.2.2 The termination, suspension or expiration of the Health Share of Oregon Participating agreement.

6.2.3 COUNTY funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. Alternatively, the parties may agree to modify the agreement to accommodate a reduction in funding.

6.2.4 COUNTY has evidence that CONTRACTOR has endangered or is endangering the health or safety of clients, staff or the public. CONTRACTOR shall ensure the orderly and reasonable transfer of care in progress with clients and shall work with COUNTY staff to accomplish same.

6.2.5 The lapse, relinquishment, suspension, expiration, cancellation or termination of any required license, certification or qualification of CONTRACTOR, or the lapse, relinquishment, suspension, expiration, cancellation or termination of CONTRACTOR's insurance as required in this agreement.

6.2.6 CONTRACTOR's filing for protection under United States Bankruptcy Code, the appointment of a receiver to manage CONTRACTOR's affairs, or the judicial declaration that CONTRACTOR is insolvent.

6.2.7 If CONTRACTOR fails to perform any of the other provisions of this agreement, or fails to pursue the work of this agreement in accordance with its terms, and after receipt of written notice from COUNTY, fails to correct such failures within ten (10) business days or such longer period as COUNTY may authorize.

6.3 Notice of Default. COUNTY may also issue written notice of default (including breach of contract) to CONTRACTOR and terminate the whole or any part of this agreement if CONTRACTOR substantially fails to perform the following specific provisions: Exhibit D(2)(A) Licenses and, Certification; Exhibit D(2)(C) Quality Assurance and Utilization Review; and Exhibit D(3) Recordkeeping and Reporting. The rights and remedies of COUNTY related to defaults (including breach of contract) by CONTRACTOR shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

EXHIBIT A
DEFINITIONS

Whenever used in this Behavioral Health Services Agreement, the following terms shall have the meanings set forth below:

"Agreement": this Behavioral Health Services Agreement between COUNTY and CONTRACTOR for the provision of services.

"CCO": means a corporation, governmental agency, public corporation that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.

"Client": an individual accessing publicly funded behavioral health services who is either an OHP Member or is determined eligible for services as an uninsured, indigent individual.

"Covered Services": medically appropriate services specified in OAR 410-141-3120, "Operations and Provision of Health Services" and limited in accordance with OAR 410-141-3420, "Billing and Payment" for OHP Members. The term "Covered Services" may be expanded, limited, or otherwise changed pursuant to the Clackamas County Health Share of Oregon/Clackamas Participation Agreement and OARs. Covered Services may also refer to authorized services provided to uninsured, indigent clients.

"DMAP": the State of Oregon, acting by and through its Department of Human Services, Division of Medical Assistance Programs.

"Health Share of Oregon": a Coordinated Care Organization (CCO) serving Oregon Health Plan enrollees of Clackamas, Multnomah and Washington Counties.

"OAR": the Oregon Administrative Rules duly promulgated by DMAP and OHA and as amended from time to time.

"OHA": the State of Oregon, acting by and through its Oregon Health Authority.

"OHP Member": an individual found eligible by a division of the Oregon Department of Human Services to receive services under the OHP Medicaid Demonstration Project or State Children's Health Insurance Program and who is enrolled with COUNTY as Health Share of Oregon / Clackamas.

"Third Party Resources": any individual, entity, or program that is, or may be, liable to pay all or part of the cost of any Covered Service furnished to an OHP Member, including but not limited to: private health insurance or group health plan; employment-related health insurance; medical support from absent parents; workers' compensation; Medicare; automobile liability insurance; other federal programs such as Veteran's Administration, Armed Forces Retirees and Dependent Act, Armed Forces Active Duty and Dependents Military Medical Benefits Act, and Medicare Parts A and B; another state's Title XIX, Title XXI or state-funded Medical Assistance Program; and personal estates.

"Valid Claim": an invoice, in the form of a CMS 1500 claim form, submitted for payment of covered health services rendered to an eligible client that is submitted within the required 120 days from the date of service or discharge and that can be processed without obtaining additional information from the provider of the service or from a third party. A valid claim is synonymous with the federal definition of a clean claim as defined in 42 CFR 447.45(b).

EXHIBIT B

SCOPE OF WORK

CONTRACTOR agrees to provide medically necessary services as described below when authorized by COUNTY's treatment authorization process. CONTRACTOR shall provide services in accordance with OAR 410-141-3120 "Operations and Provision of Health Services"; OAR 410-141-3420 "Billing and Payment"; OAR 309-032-1500 through 1565 "Integrated Services and Supports Rules", and any other administrative rules to which CONTRACTOR is subject, as such rules may be amended from time to time. Services provided are to be within the scope of CONTRACTOR's licenses and certification, and the licenses, certifications and training of its employed and contracted staff providing direct services under this agreement

1. Outpatient Mental Health Services

Treatment services directed toward ameliorating symptoms of a mental health disorder and/or maintaining stability and functional autonomy for individuals with severe and persistent mental illness. Outpatient services are specific in targeting the symptoms or problem being treated. Services may include assessment; treatment and discharge planning; individual, family and group therapy; psychiatric evaluation; medication management; case management; skills training; peer delivered services and supports. Clients may receive an outpatient service while simultaneously participating in a higher level of care. CONTRACTOR shall provide a responsive, 24-hour, 7 days per week coverage system to ensure access to services. Services may be provided in a variety of settings including, but not limited to: outpatient clinics, residential treatment facilities and supported housing.

2. Coordination of Care

CONTRACTOR shall provide coordination and integration of services with physical health care providers and chemical dependency providers as medically appropriate and within the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2 Substance Abuse Confidentiality Regulations.

2. Standards of Care

COUNTY promotes resilience in and recovery of the clients it serves. COUNTY supports a system of care that promotes and sustains a client's recovery from a mental health condition by identifying and building upon the strengths and competencies within the person to assist them in achieving a meaningful life within their community. Consistent with these values, CONTRACTOR shall:

- a. Provide services in a manner that assures continuity and coordination of the health care services provided to each client;
- b. Accept clients for treatment on the same basis that CONTRACTOR accepts other clients and render services to clients in the same manner as provided to CONTRACTOR's other clients. CONTRACTOR shall not discriminate against clients because of source of payment, race, gender, national origin, ancestry, religion, marital status, sexual orientation, age or diagnosis;
- c. Conduct its practice and treat all clients using that degree of care, skill and diligence which is used by ordinarily careful providers in the same or similar circumstances in the provider's community or a similar community (see ORS 677.095);
- d. Ensure that clients are served in the most normative, least restrictive, least intrusive and most cost effective level of care appropriate to their diagnosis and current symptoms, degree of impairment, level of functioning, treatment history, and extent of family and community supports;
- e. Advise or advocate on behalf of clients in regard to treatment options, without restraint from COUNTY;

- f. Provide clients with access to services without undue delay and as soon as necessary in light of the member's mental health condition. CONTRACTOR shall comply with access standards as set forth in the Health Share of Oregon/Clackamas Participation Agreement and OAR 410-141-3220 "Accessibility;"
- g. Ensure that all personnel providing services to clients under this agreement are properly trained and qualified to render the services they provide. CONTRACTOR shall arrange for continuing education of personnel rendering services under this agreement as necessary to maintain such competence and satisfy all applicable licensing, certification or other regulatory requirements; and
- h. Maintain facilities and equipment appropriate for provision of services to clients of a type and quality consistent with administrative rules promulgated by the State of Oregon Department of Human Services and the Americans with Disabilities Act.

EXHIBIT C

COMPENSATION AND PAYMENT

1. Compensation

CONTRACTOR shall be reimbursed at the COUNTY reimbursement rates in effect as of the date of service or billed charges, whichever is less.

2. Usual and Customary Charges

CONTRACTOR shall bill COUNTY according to their Usual and Customary fee schedule. CONTRACTOR shall base their Usual and Customary charges on a cost study that is updated annually.

3. Method of Payment

To receive payment CONTRACTOR shall submit a CMS 1500 claim form to COUNTY's Third Party Administrator, Performance Health Technology Ltd (PH Tech) within 120 calendar days of the date of service in accordance with OAR 410-141-3420, "Billing and Payment". Claims may be submitted to PH Tech in either paper or electronic format.

PH Tech shall pay CONTRACTOR on behalf of COUNTY, by the 45th business day after a valid claim is received, fee-for-service payments as specified in section 1 above. COUNTY shall have no obligation to make payment to CONTRACTOR if CONTRACTOR fails to obtain a valid authorization to provide services, fails to verify eligibility for Covered Services and the individual is not an eligible client on the date of service, if the services provided are not Covered Services, or if CONTRACTOR fails to submit fee-for-service bills within 120 calendar days of the date of service. The timely filing requirement is extended to 18 months when there is a Third Party Resource as the primary payor and to 12 months when Medicare is primary.

4. Non-Covered Services

CONTRACTOR shall follow OAR 410-141-3420, "Billing and Payment", when submitting fee-for-service claims for services provided to OHP Members that are not Covered Services.

5. Payment in Full

Except as expressly provided below, payments to CONTRACTOR made by COUNTY for services provided under the terms of this agreement shall constitute payment in full. OAR 410-141-3420, "Billing and Payment", CONTRACTOR shall not bill, charge, seek compensation, remuneration or reimbursement from, or have any recourse against OHA or any client for services contracted hereunder, either during the term of this agreement or at any time later, even if COUNTY becomes insolvent. This provision shall not prohibit collection for non-covered services that may be the responsibility of the client or any permitted copays, coinsurance, deductibles or any other cost sharing, if any and as applicable. CONTRACTOR may bill and collect separately for those costs which are lawfully the responsibility of the client. When combined with all sources of payment, COUNTY's payment to CONTRACTOR shall not exceed the reimbursement amount in effect as of the date of service.

6. Overpayments

Any payments made by COUNTY to which CONTRACTOR is not entitled under the terms of this agreement shall be considered an overpayment and shall be refunded by CONTRACTOR at the request of COUNTY, in accordance with OAR-410-120-1280, "Billing" and OAR 410-120-1397,

"Recovery of Overpayments to Providers – Recoupments and Refunds", provided that the request for refund is made within twelve (12) months from the date of payment from COUNTY to CONTRACTOR.

7. Third Party Resources and Coordination of Benefits

Pursuant to the Health Share of Oregon/Clackamas Participation Agreement, COUNTY is the payer of last resort when there is other insurance or Medicare in effect. CONTRACTOR shall bill and collect from liable third party resources prior to billing COUNTY. If both the third party resource and COUNTY reimburse CONTRACTOR for the same service, COUNTY shall be entitled to a refund for the exact amount of duplicate payment received by CONTRACTOR.

If CONTRACTOR has knowledge that a client has third-party health insurance or health benefits, or that either client or CONTRACTOR is entitled to payment by a third party, CONTRACTOR shall immediately so advise COUNTY.

Pursuant to OAR 410-141-3160, "Integration and Care Coordination", COUNTY reserves the right to coordinate benefits with other health plans, insurance carriers, and government agencies. COUNTY may release medical information to such other parties as necessary to accomplish the coordination of benefits in conformity with the Health Insurance Portability and Accountability Act (HIPAA) 45 CFR 164 and 42 CFR Part 2.. Coordination of benefits shall not result in compensation in excess of the amount determined by this agreement, except where State laws or regulations require the contrary.

8. Pay for Performance

COUNTY may offer to CONTRACTOR the opportunity to participate in a Pay for Performance program. Such a program will be designed to encourage quality improvement and client focused care and may include financial incentives for achievement of performance targets. The Pay for Performance program will be subject to funding availability. CONTRACTOR will not be eligible to receive performance payments during any time period CONTRACTOR is out of compliance with the terms and conditions of this agreement.

EXHIBIT D

PERFORMANCE STANDARDS

1. Interpretation and Administration of Agreement

CONTRACTOR acknowledges that this agreement between COUNTY and CONTRACTOR is subject to the underlying Health Share of Oregon/Clackamas Participation Agreement between COUNTY and Health Share of Oregon, the Intergovernmental Agreement between COUNTY and the Oregon Health Authority, Oregon Administrative Rules related to the Oregon Health Plan Medicaid Demonstration Project and State Children's Health Insurance Program concerning mental health services, the Oregon Revised Statutes concerning the Oregon Health Plan, and other applicable Oregon statutes and administrative rules concerning mental health services. If CONTRACTOR believes that any provision of this agreement or COUNTY's interpretation thereof is in conflict with Federal and State statutes or regulations, CONTRACTOR shall notify COUNTY in writing immediately.

2. General Performance Standards

COUNTY shall monitor services provided by CONTRACTOR and has the right to require CONTRACTOR's compliance with OHA established standards and other performance requirements relative to the quantity and quality of service and care, access to care, and administrative and fiscal management, and with all obligations and conditions stated in this agreement.

- a. Licenses and Certifications. By signing this agreement, CONTRACTOR assures that all licenses and certifications required by statute or administrative rule are and will remain current and valid for all of CONTRACTOR's employees and independent contractors providing direct service and for all of CONTRACTOR's facilities in which services are provided. CONTRACTOR assures that it is certified under OAR 309-012-0130 – 309-012-0220 or licensed under ORS Chapter 443 by the State of Oregon to deliver specified services.
- b. Eligibility and Authorization of Services. CONTRACTOR shall verify eligibility and enrollment of clients prior to providing and billing for service and obtain authorization for the provision of covered services as necessary and appropriate according to COUNTY policies and procedures. CONTRACTOR shall participate in the COUNTY concurrent review process. CONTRACTOR understands that authorization for services will be based upon this review process.
- c. Quality Assurance and Utilization Review. CONTRACTOR shall cooperate with, and participate in, COUNTY's quality assurance and utilization review programs. CONTRACTOR shall also participate in Health Share of Oregon quality initiatives as developed. Further, CONTRACTOR shall have a planned, systematic, and ongoing process for monitoring, evaluating and improving the quality and appropriateness of Covered Services provided to clients consistent with the requirements of the Health Share of Oregon/Clackamas Participation Agreement and with practice guidelines established by COUNTY.

CONTRACTOR shall work with COUNTY staff to ensure that authorized services provided by CONTRACTOR to clients are the most appropriate and cost efficient, and least restrictive. CONTRACTOR staff shall make records available to COUNTY staff on site upon reasonable notice for purposes of utilization review.

- d. Contractual Compliance. CONTRACTOR shall ensure that all providers and staff employed or contracted by CONTRACTOR who provide services to clients or are otherwise engaged in activities under this agreement are fully aware of and in compliance with the terms and conditions of this agreement.

e. Provider Appeal Process. CONTRACTOR shall have the right to appeal actions by COUNTY or decisions concerning interpretation of the Health Share of Oregon/Clackamas Participation Agreement as they apply to this agreement. Appeals shall be made in writing.

- (1) Appeals related to administrative or clinical decisions and all other matters shall be made to COUNTY Administration within thirty (30) calendar days of the date of the action being appealed. A decision shall be issued within twenty-one (21) business days of receipt of the written appeal. An appeal of that decision can be made in writing to the Director of Clackamas County Behavioral Health Division within fourteen (14) business days of the date of the decision. The Director will issue a decision within twenty-one (21) business days, and that decision will be final.
- (2) If CONTRACTOR disputes a decision by COUNTY that arises from interpretation of the Health Share of Oregon/Clackamas Participation Agreement, COUNTY will submit the facts of the dispute to the OHA Medicaid Policy Unit for determination within fourteen (14) business days of receipt from CONTRACTOR. Administrative review of decisions of the OHA Medicaid Policy Unit may be made as outlined in the Health Share of Oregon/Clackamas Participation Agreement.

3. Recordkeeping

a. Clinical Records, Access and Confidentiality

- (1) **Clinical Records.** CONTRACTOR shall ensure maintenance of recordkeeping consistent with OAR 410-141-3180, "Record Keeping and Use of Health Information Technology." The clinical record shall fully document the mental condition of the client and the services received by the client under this agreement. All clinical records relevant to this agreement shall be retained for at least seven (7) years after the date of clinical services for which claims are made, encounters reported, final payment is made, or all pending matters are closed, whichever time period is longer. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year-period, the records must be retained until all issues arising out of the action are resolved or until the end of the seven-year-period, whichever is later.
- (2) **Government Access to Records.** At all reasonable times, CONTRACTOR and its subcontractors shall provide the Center for Medicare and Medicaid Services (CMS), the Comptroller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice Medicaid Fraud Unit, DMAP, OHA, COUNTY and all their duly authorized representatives the right of access to CONTRACTOR's financial (including all accompanying billing records), clinical/medical, and personnel records that are directly pertinent to this agreement in order to monitor and evaluate cost, performance, compliance, quality, appropriateness and timeliness of services provided, and the capacity of CONTRACTOR to bear the risk of potential financial losses. These records shall be made available for the purpose of making audit, examination, excerpts and transcriptions. CONTRACTOR shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit.
- (3) **Confidentiality and Privacy of Records.** The confidentiality of information concerning clients is subject to State and Federal guidelines, including but not limited to State (ORS 179.505 through 179.507, ORS 192.502, ORS 411.320, ORS 433.045(3)) and Federal (42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50) confidentiality laws and regulations. CONTRACTOR and COUNTY shall not use, release, or disclose any information regarding a client for any purpose not directly connected with the administration of this agreement or under Title XIX of the Social Security Act, except with the written consent of the client or, if appropriate, the client's parent or guardian, or unless otherwise authorized by law.

CONTRACTOR shall ensure that its agents, employees, officers and subcontractors with access to client records understand and comply with this confidentiality provision.

- (4) Release of Information. CONTRACTOR shall assure that COUNTY and any other cooperating health service providers have access to the applicable contents of the client's clinical record when necessary for use in the diagnosis or treatment of the client, to the extent such access is permitted by law. CONTRACTOR shall release mental health service information requested by COUNTY or a provider involved in the care of a client within ten (10) business days of receiving a signed release. Except as provided in ORS 179.505(9), CONTRACTOR shall provide the client or the client's legal guardian access to client's record and provide copies within ten (10) business days of any request for copies.
- (5) External Review. CONTRACTOR shall cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, services under this agreement.
- (6) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving OHP assistance and shall furnish such information to any State or federal agency responsible for administering the OHP program regarding any payments claimed by such person or institution for providing OHP Services as the State or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) and (2); and 42 CFR 457.950(a)(3).

b. Financial Records

- (1) CONTRACTOR shall establish and maintain policies and procedures related to financial management and financial records consistent with Generally Accepted Accounting Principles. CONTRACTOR shall make such policies and procedures available to COUNTY upon request.
- (2) CONTRACTOR shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted Accounting Principles and Oregon Administrative Rules. CONTRACTOR shall make reports and fiscal data generated under and for this agreement available to COUNTY upon request.
- (3) COUNTY shall conduct a fiscal compliance review of CONTRACTOR as part of compliance monitoring of this agreement. CONTRACTOR agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of CONTRACTOR which are pertinent to this agreement to ensure appropriate expenditure of funds under this agreement. COUNTY shall monitor compliance with COUNTY's financial reporting and accounting requirements.
- (4) CONTRACTOR may be subject to audit requirements. CONTRACTOR agrees that audits must be conducted by Certified Public Accountants who satisfy the Independence requirement outlined in the rules of the American Institute of Certified Public Accountants (Rule 101 of the AICPA Code of Professional Conduct), the Oregon State Board of Accountancy OAR 801-030-0005, the independence rules contained within Governmental Auditing Standards (2011 Revision), and rules promulgated by other federal, state and local government agencies with jurisdiction over CONTRACTOR.
- (5) CONTRACTOR shall establish and maintain systematic written procedures to assure timely and appropriate resolution of review or audit findings and recommendations. CONTRACTOR shall make such procedures and documentation of resolution of audit findings available to COUNTY upon request.

- (6) Limited Scope and Full Audits shall be completed within nine (9) months of the close of CONTRACTOR's fiscal year. Audit reports, including the Management Letter associated with the audit shall be submitted to COUNTY within two weeks from the date of the report. Failure to submit required audit reports and Management Letters shall be cause for withholding of contract payment until audits are submitted.

c. Consumer Complaints

- (1) CONTRACTOR shall maintain a record of all complaints made to CONTRACTOR by the client related to services provided under this agreement. A complaint means any expression of dissatisfaction, whether oral or written, submitted by a client or representative, related to any aspect of CONTRACTOR's operations, activities or behavior that pertains to availability, delivery or quality of care. The expression may be in whatever form or communication or language that is used by the client.
- (2) CONTRACTOR shall post information on client rights and responsibilities and its consumer complaint process in a visible location in all offices, clinics and other service locations.
- (3) CONTRACTOR shall provide a copy of its consumer complaint policy and procedure to COUNTY upon request.
- (4) COUNTY reserves the right to review, upon reasonable notice and at CONTRACTOR's site, the actual documents of complaints submitted by clients, and the process by which complaints are resolved by CONTRACTOR.

4. Reporting

a. Abuse Reporting

CONTRACTOR shall comply with all processes and procedures of abuse reporting, investigations, and protective services as described in ORS 430.735 through 430.765, Abuse Reporting for Mentally Ill and OAR 407-045-0250 through 407-045-0370, "Abuse Reporting and Protective Services in Community Programs and Community Facilities".

b. Third-Party Resource Information

CONTRACTOR shall be responsible for maintaining records in such a manner so as to ensure that all moneys collected from third-party resources on behalf of clients may be identified and reported to COUNTY on an individual client basis. CONTRACTOR shall make these records available for audit and review consistent with the provisions of the Health Share of Oregon/Clackamas Participation Agreement.

c. Encounter Data

CONTRACTOR shall submit to COUNTY accurate and complete encounter data in the form of a CMS 1500 claim form for each contact with a client. CONTRACTOR shall use its best efforts to supply encounter data once a month, and shall in all cases, supply encounter data no later than 120 calendar days after a contact with a client. Each encounter claim shall include such information as required in the Health Share of Oregon/Clackamas Participation Agreement and meet specifications as a Valid Claim. CONTRACTOR shall use the most current DSM Multi-Axial Classification System. DSM codes shall be reported at the highest level of specificity.

d. Client Process Monitoring System (CPMS)

CONTRACTOR shall submit CPMS data for all clients receiving Covered Services under this agreement. CONTRACTOR shall submit all CPMS data to OHA via electronic media in the specific CPMS format. CONTRACTOR shall submit CPMS data within 30 days of initiating Covered Services and within 30 days of terminating Covered Services, reporting the data elements specified in the Health Share of Oregon/Clackamas Participation Agreement.

e. Data Submission Timeliness

CONTRACTOR assures that any and all data used for COUNTY's analysis of access, capacity, quality, consumer satisfaction, financial solvency, encounter data submission, and other data submission shall be submitted to COUNTY within time frames sufficient to allow COUNTY to meet OHA reporting requirements as described in the Health Share of Oregon/Clackamas Participation Agreement.

5. Monitoring

a. Agreement Compliance Monitoring

COUNTY and OHA shall conduct agreement compliance and quality assurance monitoring related to this agreement. CONTRACTOR shall cooperate with COUNTY and OHA in such monitoring. COUNTY shall provide CONTRACTOR twenty (20) business days written notice of any agreement compliance and quality assurance monitoring activity that requires any action or cooperation by CONTRACTOR. Notice of monitoring shall include the date the monitoring shall occur, names of individuals conducting the monitoring, and instructions and requests for information.

Should CONTRACTOR found to be out of compliance with any requirement of this agreement, the following actions may be taken by COUNTY until the issue is resolved:

- Request a conference of the parties to determine the need for technical assistance
- Require a corrective action plan
- Disallow referral of new clients to CONTRACTOR
- Put CONTRACTOR on probationary status and suspend billing authority

Should the issue remain unresolved, COUNTY may consider CONTRACTOR in breach and may terminate this agreement.

b. External Quality Review

CONTRACTOR agrees to participate with COUNTY in any evaluation project or performance report as designed by COUNTY or applicable State or Federal agency. CONTRACTOR shall make all information required by any such evaluation project or process available to COUNTY or COUNTY's designee within thirty (30) business days of request.

EXHIBIT E
FRAUD AND ABUSE

CONTRACTOR shall comply with, and as indicated, cause all employees and subcontractors to comply with, the following requirements related to fraud and abuse.

1. General

- a. CONTRACTOR, its employees and subcontractors shall comply with all provisions of the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in 42 USC 1320a-7b).
- b. CONTRACTOR, its employees and subcontractors shall comply with Oregon laws pertaining to false claims including the following: ORS 411.670 to 411.690 (submitting wrongful claim or payment prohibited; liability of person wrongfully receiving payment; amount of recovery); ORS 646.505 to 646.656 (unlawful trade practices); ORS chapter 162 (crimes related to perjury, false swearing and unsworn falsification); ORS chapter 164 (crimes related to theft); ORS chapter 165 (crimes involving fraud or deception), including but not limited to ORS 165.080 (falsification of business records) and ORS 165.690 to 165.698 (false claims for health care payments); ORS 659A.199 to 659A.224 (whistle blowing); OAR 410-120-1395 to 410-120-1510 (program integrity, sanctions, fraud and abuse); and common law claims founded in fraud, including Fraud, Money Paid by Mistake and Money Paid by False Pretenses.
- c. CONTRACTOR shall include information in its employee handbooks or other appropriate documents on laws described above, regarding the rights of employees to be protected as whistleblowers.
- d. CONTRACTOR shall further have policies and procedures for detecting and preventing fraud, waste and abuse that shall, at a minimum, include a process for monitoring and auditing files, claims and staff performance.
- e. Entities receiving \$5 million or more annually (under this Contract and any other OHP contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and Abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 USC § 1396a(a)(68).
- f. Certify when submitting any Claim for the provision of OHP Services that the information submitted is true, accurate and complete. CONTRACTOR shall acknowledge CONTRACTOR's understanding that payment of the Claim will be from federal and State funds and that any falsification or concealment of a material fact may be prosecuted under federal and State laws.

2. Fraudulent Billing and False Claims

- A. If it is determined that services billed by CONTRACTOR and paid with Medicaid funds were fraudulently billed, or that a false claim was submitted, or that an instance of abuse has occurred, the following disciplinary actions may be taken by COUNTY:
 - If Medicaid abuse is determined, consider restitution of funds based on the severity of the abuse identified.

- If fraud is determined or a false claim verified, require restitution of funds.
 - If the action identified is determined to be non-intentional, require a corrective action plan
 - Put CONTRACTOR on probationary status and suspend billing authority until the issue is resolved
 - Termination of this agreement
- B. COUNTY shall promptly refer all verified cases of fraud and abuse to the Medicaid Fraud Control Unit, consistent with the Memorandum of Understanding between the State of Oregon Department of Human Services and the Medicaid Fraud Control Unit. COUNTY shall also refer cases of suspected fraud and abuse to the Medicaid Fraud Control Unit prior to verification.

3. Participation of Suspended or Excluded Providers

CONTRACTOR shall ensure that Covered Services may not be provided to clients by the following persons (or their affiliates as defined in the *Federal Requisition Regulations*):

- Persons who are currently suspended, debarred or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issues pursuant to Executive Order 12549 or under guidelines implementing such order; and
- Persons who are currently excluded from Medicaid participation under section 1128 or section 1128A of the Act; and
- Persons who are currently excluded from providing services under the Oregon Medical Assistance Program.

EXHIBIT F

COMPLIANCE WITH APPLICABLE LAW

CONTRACTOR shall comply and, as indicated, cause all employees and subcontractors to comply with the following Federal requirements. For purposes of this agreement, all references to Federal and State laws are references to Federal and State laws as they may be amended from time to time.

1. Miscellaneous Federal Provisions

CONTRACTOR shall comply and cause all Subcontractors to comply with all federal laws, regulations and executive orders applicable to this agreement or to the delivery of Work. Without limiting the generality of the foregoing, CONTRACTOR expressly agrees to comply and cause all Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402.

2. Equal Employment Opportunity

If this agreement, including amendments, is for more than \$10,000, then CONTRACTOR shall comply and cause all Subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

3. Non-Discrimination

- a. CONTRACTOR shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. CONTRACTOR shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.
- b. CONTRACTOR shall comply with and cause its subcontractors to comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

4. Drug Free Workplace

CONTRACTOR shall maintain and cause all Subcontractors to maintain a drug-free workplace and shall notify employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in CONTRACTOR's workplace. CONTRACTOR shall establish a drug-free awareness program and provide each employee to be engaged in the provision of services

under this agreement with information about its drug-free workplace program. CONTRACTOR will further comply with additional applicable provisions of the Health Share of Oregon Core Contract.

5. Clinical Laboratory Improvement

If applicable to Scope of Work, CONTRACTOR shall and shall ensure that any Laboratories used by CONTRACTOR shall comply with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories, which require that all laboratory testing sites providing services under this agreement shall have either a Clinical Laboratory Improvement Amendments (CLIA) certificate of waiver or a certificate of registration along with a CLIA identification number. Those Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.

6. Clean Air, Clean Water, EPA Regulations

If this agreement, including amendments, exceeds \$100,000 then CONTRACTOR shall comply and cause all Subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to OHA, DHHS and the appropriate Regional Office of the Environmental Protection Agency. CONTRACTOR shall include and cause all Subcontractors to include in all contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.

7. Energy Efficiency

CONTRACTOR shall comply and cause all Subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94- 163).

8. Resource Conservation and Recovery

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

9. Audits

CONTRACTOR shall comply and, if applicable, cause a Subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

10. Truth in Lobbying

CONTRACTOR certifies, to the best of the CONTRACTOR's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of an agency, a

member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

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

11. Conflict of Interest Safeguards

- a. CONTRACTOR and its subcontractors shall have in effect safeguards, including, but not limited to, policies and procedures against conflict of interest with any State of Oregon Department of Human Services employees or other agents of the State who have responsibilities relating to this agreement. These safeguards must be at least as effective as the safeguards specified in Section 27 of the Office of Federal Procurement Policy Act (41 USC 423) and must include safeguards to avoid conflicts that could be prohibited under 18 USC 207 or 208 if the Department of Human Services employee or agent was an officer or employee of the United States Government. For purposes of implementing policies and procedures required in this section, CONTRACTOR shall apply the definitions in the State Public Ethics Law as if they applied to CONTRACTOR for "Actual conflict of interest," ORS 244.020(1), "potential conflict of interest," ORS 244.020(14), and "client of household," ORS 244.020(12).
- b. CONTRACTOR shall not offer to any DHS or OHA employee (or any relative or member of their household) any gift or gifts with an aggregate value in excess of \$50 during a calendar year or any gift of payment of expenses for entertainment. "Gift" for this purpose has the meaning defined in ORS 244.020(6) and OAR 199-005-0001 to 199-005-0035.
- c. "CONTRACTOR" for purposes of this section includes all CONTRACTOR's affiliates, assignees, subsidiaries, parent companies, successors and transferees, and persons under common control with the CONTRACTOR; any officers, directors, partners, agents and employees of such person; and all others acting or claiming to act on their behalf or in concert with them.
- d. CONTRACTOR shall apply the definitions in the State Public Ethics Law, ORS 244.020, for "actual conflict of interest", "potential conflict of interest", "relative" and "member of household".

12. Protected Health Information

CONTRACTOR is a "covered entity" for the purposes of the provisions of the Health Insurance Portability and Accountability Act (HIPAA), Title II, Subtitle F, Administrative Simplification, or the Federal regulations implementing the Act. CONTRACTOR shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records consistent with HIPAA and/or other Federal, State, and local laws, rules

and regulations applicable to the work performed under this agreement. CONTRACTOR shall ensure that confidential records are secure from unauthorized disclosure. Electronic storage and transmission of confidential client information and records shall assure accuracy, backup for retention and safeguards against tampering, back dating or alteration.

13. HIPAA Compliance

- a. The parties acknowledge and agree that each of OHA and the CONTRACTOR is a "covered entity" for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA). OHA and CONTRACTOR shall comply with HIPAA to the extent that any Work or obligations of OHA arising under this agreement are covered by HIPAA.
- b. CONTRACTOR shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this agreement and with HIPAA. CONTRACTOR shall comply and cause all Subcontractors to comply with HIPAA and all the HIPAA provisions listed in the Health Share of Oregon Core Contract.
- c. HIPAA Information Security. CONTRACTOR shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this agreement. Security incidents involving Member Information must be immediately reported to DHS' Privacy Officer.



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CAMPBELL M. GILMOUR
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

January 31, 2013

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

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with the Oregon City School District
Regarding Installation and Maintenance of Two Radar Speed Signs on Holly Lane**

The Engineering Division of the Department of Transportation and Development requests the approval of an Intergovernmental Agreement with the Oregon City School District regarding the installation and maintenance of two radar speed signs on Holly Lane. Last year, the Oregon City School District (OCSD) applied for a land use permit to add modular classrooms at Ogden Middle School, located off of Holly Lane in Oregon City. Clackamas County required a condition of approval that OCSD enter into an intergovernmental agreement with the County regarding the purchase, installation, maintenance, replacement, and power costs for two radar speed signs on Holly Lane. This agreement specifies that OCSD is responsible for the purchase, associated power costs, and any replacement costs of the radar signs. Clackamas County staff will coordinate the installation and perform routine maintenance as part of its regular maintenance activities. Therefore, no additional County Road Funds will be used for this work.

This agreement is effective upon execution by all parties and will have a five year term, which may be automatically renewed for an additional five year term.

This agreement has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the Oregon City School District regarding the installation and maintenance of two radar speed signs on Holly Lane.

Sincerely,

Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Rick Nys at (503) 742-4702

**INTERGOVERNMENTAL AGREEMENT BETWEEN OREGON CITY
SCHOOL DISTRICT AND CLACKAMAS COUNTY CONCERNING:
Holly Lane Radar Speed Signs**

**BETWEEN: Clackamas County ("County")
and
Oregon City School District ("District")**

This is an Intergovernmental Agreement ("Agreement") between Clackamas County, a political subdivision of the State of Oregon, and the Oregon City School District, a school district of the State of Oregon. It is an agreement whereby the County and the District agree upon the terms of installation and maintenance responsibilities for two radar speed signs to be placed on Holly Lane near Donovan Road.

RECITALS

- A. WHEREAS, ORS Chapter 190 allows governmental entities to enter into agreements with other governmental entities for the performance of any governmental or other function that one party to the agreement has the authority to perform; and
- B. WHEREAS, the County has jurisdiction, including maintenance responsibilities, over Holly Lane; and
- C. WHEREAS, the District (also known as "applicant" below) is required to comply with the following condition of approval of land use case Z0323-12-C regarding the installation of radar speed signs on Holly Lane near Donovan Road:

"The applicant shall enter into an Intergovernmental Agreement with Clackamas County, regarding the design, purchase, installation, maintenance, replacement, and power costs associated with two radar speed signs, which shall be operational no later than December 31, 2012. The applicant shall be responsible for the initial expenses associated with design, sign purchase, and installation. The responsibility for future ongoing expenses associated with maintenance, replacement, and power will be specified in the Intergovernmental Agreement"; and

NOW THEREFORE, the County and the District agree as follows:

- 1. Installation: The County will coordinate the installation, obtain the necessary permits, install in the County right-of-way, and make operational two radar speed signs on Holly Lane near its intersection with Donovan Road according to County standards and requirements.
- 2. Ownership: The District will own the two radar speed signs, the electrical connection and appurtenances.
- 3. Maintenance: The County agrees to provide maintenance of the two radar speed signs.

4. Funding:

4.1 The County and District shall each be responsible for their costs incurred to execute this Agreement.

4.2 The District agrees to pay the County for time and materials associated with the design and installation of the two radar speed signs.

4.3 The District agrees to pay for ongoing electrical service to the two radar speed signs.

4.4 The County agrees to pay for maintenance of the two radar speed signs.

4.5 Both parties agree to equally pay for repairs associated with crashes, accidents and/or vandalism associated with the two radar speed signs. The County agrees to make an effort to identify and recover costs from those responsible for any damage.

4.6 The District agrees to pay for purchase and installation of replacement radar speed signs when the signs reach the end of their serviceable life or are damaged beyond repair as determined by the County.

5. Cooperation: Both parties shall cooperate in the pursuit of this Agreement and shall otherwise do all things that may be necessary under this Agreement, in compliance with applicable law.

6. Effective Date: This Agreement shall become effective immediately upon its signing by each party's authorized representatives.

7. Timeliness: Both parties agree that the radar speed signs shall be operational no later than March 31, 2013.

8. Term and Termination:

8.1. This Agreement shall have a five (5) year term, and shall be automatically renewed for an additional five (5) year term unless ninety (90) days prior to January 1, 2018 one of the parties gives notice, one to the other, that the Agreement shall not be renewed.

8.2. This Agreement may be terminated by notice from one party to the other, save that the termination of the Agreement shall not eliminate the obligations each party incurred prior to the termination and Sections 9, 10, 11, 12, 13, and 16. Following notice of the termination, each party shall act to expeditious resolve its obligations under the Agreement

9. Indemnification: The parties, to the maximum extent permitted by law and subject to the Oregon Tort Claims Act, ORS Chapter 30 and the respective limitations on indebtedness contained in Article XI, section 10 of the Oregon Constitution, shall defend, indemnify and save harmless each other, their officers, employees and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits and actions, arising from their respective negligence, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to this Agreement. The County and the District each agree to give the other immediate written notice of any action or suit filed or any claim made against that party which may result in litigation in any way related to this Agreement.

10. Notice: Any notice under this Agreement shall be given in writing by personal delivery or mailing the same, postage prepaid as certified mail, to the addresses below, or such other address as either party may hereafter indicate. Any notice so addressed and mailed shall be deemed to have been received five (5) days after the date postmarked.

County Address: Traffic Engineering
Department of Transportation and Development
Development Services Building
150 Beaver Creek Rd.
Oregon City, OR 97045

District Address: Business Manager
Oregon City School District
1417 12th Street
Oregon City, OR 97045

11. Laws of Oregon: This Agreement shall be governed by the laws of the State of Oregon and the parties agree to submit to the jurisdiction of the courts of the State of Oregon. All terms and conditions necessary to be inserted into public contracts in the State of Oregon are hereby incorporated as if such provisions were a part of this Agreement.

12. Attorney's fees: In the event legal action is brought by the District or the County against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party's attorneys fees, costs and expenses. "Legal action" shall include matters subject to arbitration and appeals.

13. Insurance: The County and the District agree to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

14. Amendment: The terms of this Agreement may be amended by mutual agreement of the parties. Any amendment must be in writing, must refer specifically to this Agreement, and shall become effective only when executed by the County and the District.

15. No Third Parties: The County and the District are the only parties to this Agreement and are the only entities entitled to enforce its terms.

16. Relationship: The County and the District have no relationship other than that set out in this Agreement and other agreements. The County and the District are independent of each other. The County and the District are not in an agency relationship. The District has no control over the work done by the County or the manner in which it is performed. Neither the County nor the District, or their officers, employees, or agents, may participate in each other's pension plan, insurance, bonus, or similar benefits or programs.

17. Entire Agreement: The Agreement constitute the entire agreement between the parties.

18. Severability: If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of its remaining provisions shall not in any way be affected or impaired.

By signature below, the County and the District certify that the individuals presented are representatives of their respective bodies and are authorized to act in the matters set out in this Agreement, and execute this Agreement by the dates set forth below.

CLACKAMAS COUNTY, OREGON

By: _____
Chair

Recording Secretary

Date: _____, 2013

Oregon City School District

By: 

Tim Frisius, Chair

Date: JANUARY 14, 2013



3

CAMPBELL M. GILMOUR
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 Farline Bridge, Inc. for
Salmon River (Arrah Wanna Blvd.) Bridge Replacement Project**

The Engineering Division of the Department of Transportation and Development requests the approval of a contract with Farline Bridge, Inc. in the amount of \$1,096,996.97 to replace the Salmon River (Arrah Wanna Blvd.) Bridge with a new structure. This project has been budgeted in the DTD Capital Improvement Budget and is funded by the Federal Highway Administration (FHWA) Highway Bridge Program (HBP) and County Road Funds.

The existing 117-foot-long two-span bridge on Arrah Wanna Blvd. crossing the Salmon River is a narrow single lane, weight restricted bridge that is functionally obsolete and structurally deficient. The existing bridge will be replaced with a new 140-foot-long clear-span, prestressed concrete girder bridge. A temporary detour bridge will be constructed to handle traffic across the river during construction of the new bridge.

In November 2012, the Salmon River (Arrah Wanna Blvd.) Bridge Replacement Project was advertised for competitive bids. The lowest responsive and responsible bidder was Farline Bridge, Inc. The project is expected to begin at the contract signing and be substantially complete by October 31, 2014. The contract will be complete December 31, 2015 to allow for plant establishment.

The contract has been reviewed and approved by County Counsel.

Recommendation

Staff respectfully recommends that the Board approves and signs the contract with Farline Bridge, Inc. for the Salmon River (Arrah Wanna Blvd.) Bridge Replacement Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Bezner".

Mike Bezner, PE
Transportation Engineering Manager

Placed on the Jan. 31, 2013 agenda by the Purchasing Division.

For information on this issue or copies of attachments
please contact Kerri Whitlow at 503-742-4680



LANE MILLER
MANAGER

PURCHASING DIVISION

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

January 31, 2013

MEMORANDUM TO THE BOARD OF COUNTY COMMISSIONERS

Please place on the Board Agenda of **January 31, 2013** this contract with Farline Bridge, Inc. for the **Salmon River (Arrah Wanna Blvd) Bridge Replacement Project** for the Clackamas County DTD Engineering Division. This project was requested by Kerri Whitlow, Project Manager. Bids were requested for all the materials and manpower necessary to complete specified work on the above-mentioned project. This project was advertised in accordance with ORS and LCRB Rules. Six bids were received: Farline Bridge - \$1,096,996.97; Legacy Contracting - \$1,122,973.50; Oregon State Bridge Construction - \$1,290,053.80; MJ Hughes Construction - \$1,296,238.99; Carter & Company - \$1,269,583.50; and Wildish Standard Paving - \$1,545,199.13. After review of all bids, Farline Bridge, Inc was determined to be the lowest responsive and responsible bidder. The total contract amount is not to exceed \$1,096,996.97. All work is to be completed by October 31, 2014. This contract has been reviewed and approved by County Counsel. Funds for this project are covered under budget line 416-2433-02105-481200-22083 for fiscal years 2012/2013, 2013/2014, and 2014/2015.

Respectfully Submitted,

Kathryn M. Holder
Purchasing Staff



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NANCY S. BUSH
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD | OREGON CITY, OR 97045

January 31, 2013

Board of Commissioners
Clackamas County

Members of the Board:

Addendum to Current Hazard Mitigation Grant Program DR-1956-OR
Intergovernmental Agreement and Delegation of Authority to Acquire Flooded Property

The Department of Emergency Management requests the approval of an Intergovernmental Agreement Addenda with the Oregon Military Department, Office of Emergency Management (OEM) in the amount of \$346,877 to acquire and demolish a flood damaged residential property. Funding is from the Federal Emergency Management Agency Hazard Mitigation Grant Program (HMGP) with a maximum of \$7,883.50 from General Funds to cover the 25% local match for project management costs.

Following the January 16, 2011 floods, the County began the process of providing limited assistance to flooded homeowners along the upper Sandy River through the HMGP with the option of voluntary flooded property acquisitions (buyouts) to permanently alleviate future impacts to those individual properties, minimize disruption to the greater community and protect the environment. Acquired properties will be maintained as open space in accordance with federal law.

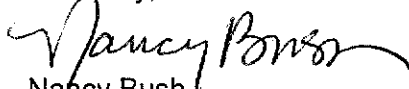
Under this IGA Addenda, the flood damaged property at 23911 E Lolo Pass Road in Rhododendron will be acquired. As with prior arrangements, this property can be acquired more expeditiously, and with more convenience to the landowners, if the Board were to specifically delegate the power to acquire this property to the Director of the Department of Emergency Management.

The IGA has been reviewed and approved by County Counsel.

RECOMMENDATION:

- Staff respectfully recommends that the Board approve and sign the attached IGA for the Hazard Mitigation Grant Program Contract DR-1956-OR; and
- Delegate authority for the purchase of the two properties to the Director of the Department of Emergency Management.

Sincerely,


Nancy Bush
Director

For information on this issue or copies of attachments
please contact Jay Wilson at (503) 723-4848

STATE OF OREGON
OREGON EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM CONTRACT DR-1956-OR
CONTRACT FUNDING ADDENDUM No. 1

1.0 PARTIES TO THIS AGREEMENT

This Agreement is made and entered into by and between the Oregon Military Department, Office of Emergency Management, hereinafter referred to as Grantee and **Clackamas County** hereinafter referred to as the Subgrantee. This is the first addendum to Hazard Mitigation Grant Program Contract, FEMA DR-1956-OR contract dated July 10, 2012. This Addendum No. 1 is effective on the date it has been signed by all parties and is hereby incorporated into Hazard Mitigation Grant Program Contract, FEMA DR-1956-OR.

2. PURPOSE

Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by the Grantee. Under the authority of Presidential Major Disaster Declaration FEMA DR-1956-OR, the Grantee is reimbursing the Subgrantee for those eligible project costs and activities necessary for the implementation of the Hazard Mitigation Project entitled **Clackamas County-Sandy River Property Acquisition Project** initially dated **February 2011** and as described in subsequent application materials submitted to Grantee.

3.0 PERFORMANCE

This contract addendum authorizes *additional* federal funding for the mitigation of an additional residential structure that was damaged by the January 2011 flood event plus project management costs. The residential structure is located at:

Address

- 23911 E Lolo Pass Road (Schlossler Property)
- Project Management For project management-related activities

4.0 FUNDING

The total amount of funding authorized by this contract addendum is **\$346,877** which is the 100% share amount. The parties understand that the Federal Emergency Management Agency will contribute seventy-five percent (75%) of the eligible costs for any eligible project activity. For this addendum the 75% Federal share is **\$260,158**. Funds not spent as obligated for this contract addendum may be applied to future, eligible project activities when so approved

by FEMA. Along with the original sub-grant obligation and this addendum 1, an aggregated total of \$564,730 Federal share has been obligated for project activities to date.

6.0 PAYMENTS

There are no changes to the procedures for the reimbursement of eligible subgrantee project costs as previously described in the contract.

IN WITNESS WHEREOF, the Grantee and the Subgrantee have executed this Agreement as of the date and year written below.

Governor's Authorized Representative
Office of Emergency Management

Board of County Commissioners
Printed Name: _____

Title: _____

DATE: _____

DATE: January 31, 2013

Oregon Emergency Management
P.O Box 14370
Salem, OR 97309-5062

Subgrantee: Clackamas County
2051 Kaen Rd
Oregon City, OR 97045

Federal Tax ID No. (TIN): 93-60002286
DUNS #: 096992656
FIPS: 055-99005

CFDA: 97.039

Approved For Legal Sufficiency
Keith Kutler
Assistant Attorney General

r:\disaster\dr1956\mitigation404\clackamas_co\1956.0002-acquisitions\clackamas.hmgp grantee-subgrantee contract per genb6280-rev-to-dr1956-v2addendum.doc

STATE OF OREGON
OFFICE OF EMERGENCY MANAGEMENT

HAZARD MITIGATION GRANT PROGRAM CONTRACT, FEMA DR-1956-OR

1.0 PARTIES TO THIS AGREEMENT

This Agreement is made and entered into by and between the State of Oregon, Oregon Military Department, Office of Emergency Management, hereinafter referred to as "Grantee" and **Clackamas County**, hereinafter referred to as "Subgrantee".

WHEREAS the President of the United States has declared that a major disaster exists in the State of Oregon based on damage resulting from severe winter storms, flooding, mudslides, landslides & debris flows on January 13-21, 2011.

WHEREAS Grantee is authorized by the 2011 FEMA-State Agreement for the February 17, 2011 Presidential Disaster Declaration (DR-1956-OR) to execute on behalf of the State of Oregon all necessary documents for the Hazard Mitigation Grant Program, including approval of sub-grants and certification of claims.

THEREFORE, the Parties mutually agree to the following.

2.0 PURPOSE

Federal funding is provided by the Federal Emergency Management Agency (FEMA) and is administered by Grantee. Under the authority of Presidential Major Disaster Declaration FEMA DR-1956-OR, Grantee is reimbursing the Subgrantee for those eligible costs and activities necessary for the implementation of the Hazard Mitigation Project entitled **Clackamas County – Sandy River Property Acquisition Project (Phase 1)** initially dated February 2011 and described in the application materials submitted to Grantee as the work to be performed, hereinafter referred to as the "Project".

3.0 TIME OF PERFORMANCE

Activities payable under this Agreement and to be performed by Subgrantee under this Agreement shall be those activities which occurred starting **February 17, 2011**¹ and shall terminate upon completion of the Project approved by federal and state officials, including completion of close out and audit. This period shall

¹ Initial disaster declaration, DR-1956, for project management activities and subsequently when authorized by FEMA's Record of Environmental Consideration for on-the-ground HMGP project activities.

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be referred to as the "Agreement Period." Except as otherwise provided in this Section 3.0, the Project shall be completed no later than **March 12, 2014**.

In the event of extenuating circumstances preventing Subgrantee from completing the Project on or before the FEMA performance deadline of **March 12, 2014**, Grantee may, at its sole discretion and if approved beforehand by FEMA, grant a time extension to the approved Project. Request for an extension of time shall be submitted by Subgrantee in writing with an explanation of the extenuating circumstances.

4.0 PERFORMANCE

This contract authorizes federal funding for the acquisition of two residential structures that were substantially damaged by the January 2011 flood event. The residential structures are located at:

- 21432 Glacier Ct
- 21438 Glacier Ct

5.0 CLOSE-OUT

It shall be the responsibility of Grantee to issue close-out instructions to the Subgrantee upon completion of the Project.

6.0 FUNDING

The initial estimated cost of the Project for the purpose of this Grant Agreement is **\$406,096** for project management activities, only. This contract can be amended by subsequent funding obligations for on-the-ground project activities as they are approved by FEMA.

Project Management (if approved in the scope of work): Project management is the oversight of an eligible project from the design phase (when necessary) to the completion of the work. Costs related to project management are eligible and can be reimbursed up to 10% of the total project cost and may be accomplished using contractor or force account labor, for example. Project management shall not be confused with subgrant administration which is intended to cover "all necessary costs of requesting, obtaining, and administering Federal assistance" which is described in subparagraph 4 of Section 6.0.

Project Engineering (if approved in the scope of work): Costs related to professional engineering services required to implement a project. Project engineering includes analysis and design activities and can be reimbursed up to 10% of the total project cost. Complex or larger projects may require additional engineering and this 10% cap can be reviewed on a case-by-case basis.

Grantee will administer the Hazard Mitigation Grant Program and reimburse any eligible costs for the Project to Subgrantee which are identified in the documentation provided by Subgrantee and approved by Grantee and FEMA.

The Parties understand that the Federal Emergency Management Agency will contribute up to seventy-five percent (75%) of the eligible costs for any eligible project and may also contribute an administrative allowance, as provided for in subparagraph 3 of Section 6.0 of this Agreement, and that no state funds are obligated for contribution under this Agreement. The 75% Federal share for this project is **\$304,572**.

Subgrantee will commit the required twenty-five percent (25%) non-federal match to any eligible project. The non-federal match can be cash, in-kind or a combination of both.

7.0 PAYMENTS

Grantee, using funds granted for purposes of the Hazard Mitigation Grant Program from FEMA, shall issue payments to Subgrantee as follows:

1. Payments will be made to Subgrantee upon submission and approval of a State of Oregon Hazard Mitigation Program Payment Request to the Grantee. Partial payments of funds for costs already incurred may be requested at any time during the Project. This request must include appropriate supporting documentation of the incurred costs.
2. Final Payment will be made upon completion of Project, completion of all final inspections by Grantee, and final approval by FEMA. Final payment will also be conditioned upon a financial review by Grantee or FEMA. Adjustments to the final payment may be made following any audits conducted by the Oregon Secretary of State's Audits Division or the United States Inspector General's Office.
3. Subgrantee is *potentially* eligible to receive federal funding for administrative costs associated with requesting, obtaining, and administering the Hazard Mitigation Program grant(s). With DR-1956 Subgrantee costs for grant administration (administrative allowance) are now part of the overall State Management Cost component of HMGP. To simplify the calculation of the Subgrantee administrative allowance and provide consistency and equitability among all subgrantees, the Subgrantee management/administrative allowance can be reimbursed up to the following percentages (sliding scale):
 - Calculated at 1.5% of the first \$200,000 of the 100% total project cost, and

- For the 100% amount above \$200,000 but no more than \$500,000 at 1.00%.

Subgrantee administrative costs must be supported by back-up documentation to receive reimbursement. It is possible that the Subgrantee administrative allowance as calculated above could be reimbursed at a lesser rate with insufficient back-up documentation or *not reimbursed at all* based on the availability of State Management Cost funding.

4. All payment requests shall be made on a State of Oregon Hazard Mitigation Program Payment Request Form to the Grantee, which references the appropriate Hazard Mitigation Project Number, FEMA Project Number and FEMA FIPS Number, and appropriate documentation as required.
5. Funding shall not exceed the total federal contributions available for the approved hazard mitigation project costs under the Hazard Mitigation Grant Program FEMA-DR-1956-OR.
6. Grantee reserves the right to make any inspection prior to release of any payment or at any time during the duration of this Agreement.

8.0 COST OVERRUNS

Cost overruns are the responsibility of the Subgrantee and will be borne fully by the Subgrantee.

9.0 RECORDS MAINTENANCE

The Subgrantee shall maintain books, records, documents, and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by Grantee personnel, other personnel duly authorized by the Grantee, the Secretary of State's Audits Division, or the United States Inspector General. Subgrantee will retain all books, records, documents, and other material relevant to this Agreement for three years after date of final payment or an extended period as established by FEMA in 44 CFR 13.42.

Subgrantee will photographically document pre-construction, construction and completed conditions of the Project and make such documents a part of its records.

For acquisition projects, FEMA is required to track the use of real property acquired with grant funds in order to ensure that the property is maintained for open space in perpetuity (see 44 CFR Part 80). Subgrantee shall retain real estate transaction and property tracking records indefinitely.

10.0 AUDITS AND RECORDS

Audits shall be in accordance with the Single Audit Act of 1984, as amended. Subgrantee is to procure, at its own cost, audit services based on the following guidelines:

1. Subgrantee receiving less than \$50,000 in federal funds in a fiscal year is exempt from compliance with the Single Audit Act. However, records must be available for review by Grantee.
2. Subgrantee receiving \$50,000 to \$500,000 in total federal funds in a fiscal year may choose to have an audit made in accordance with the Office of Management and Budget (OMB) Circular A-133 or a program audit.
3. Subgrantee receiving \$500,000 or more in a fiscal year in total federal funds shall have a Single Audit made in accordance with OMB Circular 1-133.

As applicable, Subgrantee must ensure the audit is performed in accordance with Generally Accepted Accounting Principles; Generally Accepted Government Auditing Standards developed by the comptroller General; the OMB Compliance Supplement for Single Audits of State and Local Governments; and all state and federal laws and regulations governing the program.

Subgrantee must prepare a Schedule of Financial Assistance for federal funds that includes: Grantor name, program name, federal catalog number (CFDA-83.548), grantor agreement number, total award amount, beginning balance, current year revenues, current year expenditures and ending balances.

Subgrantee shall maintain records and accounts in such a way as to facilitate the Grantee's audit requirements, and ensure that Subgrantee's contractors and subcontractors also maintain records which are auditable. Subgrantee is responsible for any audit exceptions incurred by its own organization or that of its contractors. Grantee reserves the right to recover from the Subgrantee disallowed costs resulting from the final audit.

Subgrantee shall send the audit report to Grantee's Project Administrator as soon as it is available, but no later than nine months after the end of the Subgrantee's fiscal year in which any funds received by Subgrantee under this Agreement are received. Responses to previous management findings and disallowed or questioned costs shall be included with the audit report.

Subgrantee will respond to Grantee's requests for information or corrective action concerning audit issues within 30 days of the request.

Subgrantee shall include these requirements in any contract or subcontracts.

11.0 RECOVERY OF FUNDS

In the event that Subgrantee fails to complete the Project(s), fails to expend, or is overpaid federal funds in accordance with federal or state Hazard Mitigation Program laws or programs, or is found by audit or investigation to owe funds to Grantee, Grantee reserves the right to recapture funds in accordance with federal and state laws and requirements. Repayment by Subgrantee of funds under this recovery provision shall occur within 30 days of demand. In the event that Grantee is required to institute legal proceedings to enforce this recovery provision, Grantee shall be entitled to its costs thereof, including reasonable attorney fees.

The Subgrantee shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subgrantee shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subgrantee obtains recovery from a responsible party, the Subgrantee shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subgrantee shall pay to the state the proportionate federal share of all project funds recovered in excess of costs of litigation.

12.0 CONFLICT OF INTEREST

Subgrantee will prohibit any employee, governing body, contractor, subcontractor, or organization from participating if the employee or entity has an actual or potential conflict of interest that a public official would have under ORS Chapter 244.

13.0 POLITICAL ACTIVITY

No portion of the funds provided herein shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot measure.

14.0 ASSIGNMENT

This Agreement, and any claim arising under this Agreement, may not be assigned or delegated by Subgrantee either in whole or in part.

15.0 SUBCONTRACTS FOR ENGINEERING SERVICES

In the event that Subgrantee subcontracts for engineering services, Subgrantee shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's contract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with Subgrantee for the benefit of Subgrantee of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that cancellation or lapse of the bond or insurance during the term of the contract termination. Subgrantee shall cause the subcontractor to provide it with a thirty (30) day notice of cancellation issued by the insurance company.

16.0 APPEALS

Consistent with the Code of Federal Regulations, 44 CFR Chapter 1, 206.440, Subgrantee may appeal any determination previously made related to the federal assistance for Subgrantee. The Subgrantee's appeal shall be made in writing and submitted to OEM within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the Subgrantee's position.

17.0 GOVERNING LAW AND VENUE

1. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between OEM and Subgrantee 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. Subgrantee, by execution of this agreement, consents to the exclusive jurisdiction of said court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

2. Notwithstanding Section 2, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This section applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This section is also not a waiver by the State of Oregon of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States

18.0 TERMINATION; RECOVERY OF FUNDS

1. Except as otherwise provided in this Agreement, either party may terminate this Agreement upon giving thirty (30) days written notice to the other party. In the event of termination of this Agreement, each party shall be liable only for project costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subgrantee will return of all federal funds paid to Subgrantee for the Project which have not been expended or irrevocably committed to eligible activities.
2. Grantee may unilaterally terminate all or part of this Agreement or may reduce its scope of work if there is:
 - a. A reduction in federal funds which are the basis for this Agreement, and/or,
 - b. A material misrepresentation, error, or inaccuracy in Subgrantee's application.
3. Termination upon Noncompliance by Subgrantee
 - a. OEM may terminate this Agreement, in whole or in part, immediately upon written notice to SUBGRANTEE, or at such later date as OEM may establish in such notice, if SUBGRANTEE commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement. In its notice, OEM may permit SUBGRANTEE an opportunity to cure the breach, default or failure in such time and on such terms as OEM may specify in such notice.
 - b.
 1. If Grantee's inspections and review of Subgrantee support documentation reveal deficiencies or unapproved variances in performance or documentation of the work, Grantee will notify the Subgrantee, which will correct deficiencies or variances before program closure.
 2. If Subgrantee's corrective actions required do not resolve deficiencies or variances from the approved Project, Grantee will so notify Subgrantee. If Grantee determines that the deficiencies or variances constitute noncompliance with or nonconformance to the Hazard Mitigation Grant Program requirements or conditions, Grantee will notify Subgrantee of that determination and recover obligated funds from the Subgrantee and take any other actions authorized or required under 44 CFR 13.43 (Enforcement) or 44 CFR 13.44 (Termination for Convenience) that are appropriate in the circumstances.

19.0 SAVINGS

Subgrantee shall apply any savings, rebates, and reductions in cost to reduce the overall cost of the Project.

20.0 WAIVERS

The failure of OEM to exercise, and any delay in exercising, any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

21.0 INDEMNIFICATION

To the extent permitted by any constitutional and statutory limitations applicable to Subgrantee, including, but not limited to, provisions relating to debt limits, tort claims limits and workers' compensation, Subgrantee shall, as required by ORS 401.145(2), indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the activities of Subgrantee, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement.

22.0 Subgrantee ASSURANCES

Subgrantee represents and warrants to Grantee as follows:

1. Subgrantee is a political subdivision of the State of Oregon. Subgrantee has full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
2. This Agreement has been duly authorized, executed, and delivered on behalf of Subgrantee and constitutes the legal, valid, and binding obligation of Subgrantee, enforceable in accordance with its terms.
3. Subgrantee hereby assures and certifies that it will comply with all applicable state and federal laws and regulations, including, but not limited to, the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC §§ 5121-5206 (Public Law 93-288, as amended; hereafter "Stafford Act"); 44 CFR Parts 7, 13, 14, 17, 18 and 206, and Subchapters B, C and D; Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122 and A-133; the Oregon State Public Assistance Administrative Plan dated September 1993; Wages, Hours and Records Laws (ORS Chapter 652) Conditions of Employment Laws (ORS Chapter 643) and Unemployment Insurance Laws (ORS Chapter 657).

4. The emergency or disaster relief work for which federal assistance is requested herein does not or will not duplicate benefits received for the same loss from any other source.
5. Subgrantee will operate and maintain the facilities being restored using funds provided under this Agreement in accordance with the minimum standards as may be required or prescribed by the applicable federal, state and local agencies for the maintenance and operation of such facilities.
6. Subgrantee will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards, and will evaluate the hazards in areas in which the proceeds of the grant are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices. Subgrantee will, prior to the start of any construction activity, ensure that all applicable federal, state and local permits and clearances are obtained including FEMA compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other federal and state environmental laws.
7. Subgrantee will not enter into a contract with a contractor who is on the General Services Administration (GSA) List of Parties Excluded from Federal Procurement or Non-procurement Programs.
8. Subgrantee will comply with minimum wage and maximum hours provision of the Federal Fair Labor Standards Act.
9. Subgrantee shall comply with all applicable federal and state non-discrimination laws, regulations, and policies. No person shall, on the grounds of age, race, color, sex, religion, national origin, marital status, or disability (physical or mental) be denied the benefits of, or otherwise be subjected to discrimination under any project, program, or activity, funded, in whole or in part, under this Agreement. A violation of this provision is a material breach and cause for termination under Section 17.0 of this Agreement.
10. Subgrantee shall utilize certified minority-owned and women-owned businesses (MWBE's) to the maximum extent possible in the performance of this Agreement.
11. Subgrantee does not have to comply with the provisions of the Davis-Bacon Act for grants made under the disaster assistance program. However, if FEMA and any other Federal agency are a party to a contract

for the repair or restoration of a public building or public facility, the contract would have to comply with the Davis-Bacon Act.

12. Subgrantee and its contractors, subcontractors, and other employers providing work, labor, or materials as a result of the application are subject employers under the Oregon Workers' Compensation Law. All employers, including Subgrantee, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident.
13. Subgrantee will comply, and will ensure that other entities comply, with the Buy American Act (41 USC 10a et seq.) when expending funds received under this Agreement.

23.0 OWNERSHIP OF PROJECT/CAPITAL FACILITIES

The Grantee makes no claim to any capital facilities or real property improved or constructed with funds under this Agreement, and by this grant of funds, does not and will not acquire any ownership or title to such property of the Subgrantee.

24.0 ACKNOWLEDGMENTS

Subgrantee shall include language which acknowledges the funding contribution of the Federal Emergency Management Agency (FEMA) to this Project in any information release or other publication developed or modified for, or referring to the Project.

25.0 INSURANCE

The Subgrantee will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

26.0 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 and applications of this Agreement 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.

27.0 HEADINGS

The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.

28.0 AGREEMENT ADMINISTRATION

The Parties' representatives for purposes of this agreement are:

For SUBGRANTEE:

NAME:
CONTACT:
TITLE:
ADDRESS:
CITY:
Phone:
Fax:

For OEM:

Paulina Layton
Section Director, Mitigation and Recovery Services Section
Office of Emergency Management
P.O. Box 14370
Salem, OR 97309-5062
Phone: (503)378-2911, ext 22227
Fax: (503) 373-7833

Notices under this agreement shall be given in writing by personal delivery, facsimile, email or by regular or certified mail to the person identified in this

Section, or to such other person or at such other address as either party may hereafter indicate pursuant to this section. Any notice delivered personally shall be deemed received upon delivery. Notice by facsimile shall be deemed given when receipt of the transmission is generated by the transmitting machine. Notice by email is deemed received upon a return email or other acknowledgment of receipt by the receiver, and notice by certified or registered mail is deemed received on the date the receipt is signed or delivery is refused by the addressee.

29.0 PROPERTY ACQUISITION

In the event that the Subgrantee's Hazard Mitigation Project involves the acquisition of real property, Subgrantee acknowledges compliance with 44 CFR Part 80.

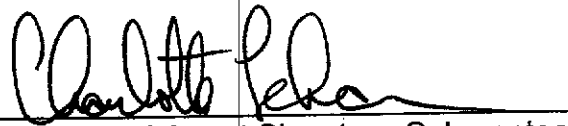
30.0 ENTIRE AGREEMENT

This Agreement sets forth the entire Agreement between the Parties with respect to the subject matter hereof. Any additional terms or conditions imposed by FEMA or Grantee will be incorporated into an amendment to this Agreement. Commitments, warranties, representations, and understandings or agreements not contained, or referred to, in this Agreement or written amendment hereto shall not be binding on either party. Except as may be expressly provided herein, no alteration of any of the terms or conditions of this Agreement will be effective without the written consent of both parties.

IN WITNESS WHEREOF, Grantee and Subgrantee have executed this Agreement as of the date and year written below.



Governor's Authorized Representative
Oregon Emergency Management



Authorized Agent Signature-Subgrantee
Printed Name: Charlotte Lehan
Title: Chair

E.I.

DATE: July 10, 2012

DATE: June 28, 2012

Oregon Emergency Management
P.O Box 14370

Subgrantee - PLEASE PRINT THE
FOLLOWING TO EXPEDITE

Salem, OR 97309-5062

PROCESSING:

CFDA: 97.039

Federal Tax ID No. (TIN): 93-60002286

Approved for Legal Sufficiency:

DUNS #: 096992656

Steven Wolf
Assistant Attorney General

Organization: Clackamas County

Address: 2051 Koen Rd

Phone: Oregon City, OR 97045

R:\disaster\dr1956\mitigation404\clackamas_col\clackamas_hmgp grantee-subgrantee contract per-genb6280_rev-to_dr1956_v1.doc

RECORDING MEMO

New Agreement/Contract
Amendment/Change Order Original Number _____
Policy, Reports,

ORIGINATING COUNTY
DEPARTMENT:

Clackamas County Emergency Management

OTHER PARTY TO
CONTRACT/AGREEMENT:

Oregon Military Department, Office of Emergency
Management

BOARD AGENDA ITEM
DATE/NUMBER:

June 28, 2012 *E.L.*

PURPOSE:

Approval of Hazard Mitigation Grant Program
Intergovernmental Agreement DR-1956-OR and Delegation
of Authority to Acquire flooded Property.

If you want the item returned to you after recording indicate here.

Please return the three originals to Jay Wilson, Emergency Management Department, after recording. Thank you!

COUNTY COUNSEL DOCUMENT REVIEW
TRANSMITTAL FORM

JUN 13 2012

Clackamas
County Counsel

DATE: 6/13/2012

TO COUNTY COUNSEL ATTORNEY: DAVID ANDERSON

FROM: Jay Wilson (name)

EXTENSION: 4848 DEPARTMENT/DIVISION: Emerg Mgmt

BILL TO Emergency Mgmt (Department/Division to be billed)

TYPE OF DOCUMENT: Intergovernmental Agreement (IGA)

NAME OF DOCUMENT: OEM Hazard Mitigation Grant Program Contract DR-1956-OR

REQUESTED RETURN DATE: 6/20/2012

Requestor Comments: Standard IGA to administer FEMA
grant for flood buyouts on Sandy River

=====

APPROVED AS TO FORM:

County Counsel: D. Anderson Date: 6/18/12

Counsel Comments:



WATER
ENVIRONMENT
SERVICES

Beyond clean water.

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

January 31, 2013

Board of Commissioners
Clackamas County

Members of the Board:

APPROVAL OF AMENDMENT 1 TO THE AGREEMENT TO FURNISH
CONSULTANT SERVICES TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND
THE TRI-CITY SERVICE DISTRICT FOR THE
BLUE HERON REMEDIAL INVESTIGATION/FEASIBILITY STUDY, PHASE 2

WES staff on behalf of Clackamas County Service District No. 1 (CCSD#1) and the Tri-City Service District (TCSD) request the approval of Amendment 1 to the Professional Services Agreement with CDM Smith Inc. to complete Phase 2 of the Blue Heron Remedial Investigation and Feasibility Study. Amendment 1 in the amount of \$177,400 brings the total contract amount to \$227,400. A consultant contract to support the first phase of the investigation was approved by the BCC on August 23, 2012 and awarded with an option of modifying the scope and the value of the contract as each phase of the effort was completed, approved by DEQ and the scope of the second phase of the effort was developed. The cost of the project will be split 50/50 between the two districts; funds for the project are identified in the Districts' approved FY2012-13 budgets. No County General Funds are involved.

The Districts' (CCSD#1 and TCSD) entered into a co-investment regulatory strategy to acquire the Blue Heron West Linn environmental assets two years ago to secure a superior outfall pipe and its associated Clean Water Act permit. The objective was to meet the current and future challenges of increasingly stringent regulations governing heat discharges and toxic mixing into the Willamette River. The Districts' were successful in purchasing the property, finalizing the transfer from the bankruptcy court in July 2012. The property includes approximately 39 acres of land, including easements, treatment lagoon and other infrastructure. Subsequently, the Districts entered into an Intergovernmental Agreement (IGA) regarding funding of the acquisition, the clean-up of the site and use of the property (the "Blue Heron IGA") in December 2012.

Shortly before acquisition of the property, the Districts entered into a Prospective Purchaser Agreement (PPA) with the Oregon Department of Environmental Quality (ODEQ) to limit the Districts risk from prior industrial activities. The PPA process was based on recognizing the public benefit of the Districts converting the treatment lagoons, remediating anticipated minor levels of contamination on site, into a productive public use. In return, the Districts will be insulated from any future environmental liability from past use of the property.

The Districts' standing advisory boards, CCSD#1's Riverhealth Advisory Board, Tri-City Service District Advisory Committee, and the Regional Wastewater Treatment Capacity Advisory Committee, were briefed on the effort and supported the proposed purchase and public process.

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www.clackamas.us/wes/

As part of the PPA, ODEQ developed a Scope of Work (SOW) for completion of a Remedial Investigation & Feasibility Study (RI/FS) that the Districts need to complete for their requested legal protection. WES staff solicited consultant proposals to provide professional services to complete the RI/FS. Seven proposals were received and, after review CDM Smith was selected to complete the effort. DEQ requires review and approval at various milestones before proceeding through each phase of the effort.

The following is a summary of the Phases anticipated under this contract:

- Phase 1: Prepare and complete the Remedial Investigation Proposal and Remedial Investigation Work Plan per ODEQ requirements - *Completed*
- Phase 2: Completion of RI Work and submittal of RI report to ODEQ – Submitted to BCC for approval
- Phase 3: Completion of Risk Assessment and Feasibility Study - Future

The cost of entire RI/FS consultant effort is anticipated to be approximately \$250,000. The original Agreement with CDM was awarded in the amount of \$50,000 for Phase 1. CDM Smith has completed Phase I which was reviewed and approved by DEQ. The project is now ready to proceed to Phase 2. The District established a total procurement and cleanup effort at \$6 million, with the intent of budgeting annually to fund the effort as it progresses.

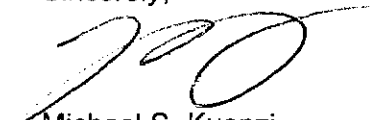
CDM Smith has provided WES with a scope of work and budget of \$177,400 for completion of Phase 2, bringing the total contract to \$227,400.00. District Counsel has reviewed the proposed Amendment.

RECOMMENDATION

The Districts recommend that:

1. The Board of County Commissioners, acting as the governing body of the Clackamas County Service District #1, approve Amendment 1 to the Agreement to Furnish Consultant Services to the Districts for the Blue Heron Remedial Investigation/Feasibility Study, Phase 2, increasing the amount by \$177,400.00; and
2. The Board of County Commissioners, acting as the governing body of the Tri-City Service District, approve Amendment 1 to the Agreement to Furnish Consultant Services to the Districts for the Blue Heron Remedial Investigation/Feasibility Study, Phase 2, increasing the amount by \$177,400.00; and
3. The Director of Water Environment Services be authorized to sign and execute the Amendment.

Sincerely,



Michael S. Kuenzi
Director

AMENDMENT 1

TO THE AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and
TRI-CITY SERVICE DISTRICT
FOR
THE BLUE HERON WEST REMEDIAL INVESTIGATION AND FEASIBILITY STUDY

THIS AMENDMENT NO. 1 is made and entered into on January ____, 2013 by and between Clackamas County Service District No. 1 and Tri-City Service District, hereinafter referred to as the "DISTRICTS", and CDM Smith, Inc., a Massachusetts corporation, hereinafter referred to as the "CONSULTANT", to provide professional services to complete all activities for a Remedial Investigation and Feasibility Study for the Blue Heron West property, hereinafter called the "PROJECT".

WHEREAS, the DISTRICTS and CONSULTANT are parties to that certain agreement between them for the provision of professional services dated August 23, 2012 (the "Agreement") to be completed in accordance with the Prospective Purchaser Agreement/Consent Order Scope of Work between the Districts and the Oregon Department of Environmental Quality ("ODEQ"); and

WHEREAS, the PROJECT is to be completed in three Phases, each phase requiring ODEQ review and approval before proceeding to the next; and

WHEREAS, Phase 1, Remedial Investigation (RI) Proposal and Work Plan, is completed and approved, and CONSULTANT is ready to proceed to Phase 2, Completion of RI Work and submittal of RI Report to ODEQ; and

WHEREAS the parties are desirous to capture Phase 2 work to be done pursuant to the terms and conditions therein;

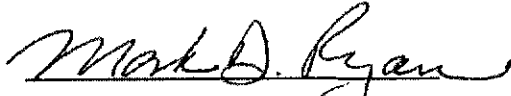
THEREFORE, the parties agree that the Agreement is amended as follows:

1. Exhibit A of the Agreement shall read as attached hereto;
2. Exhibit B of the Agreement shall read as attached hereto;
3. Article 5.1.1 of the Agreement is hereby amended and replaced in its entirety with:

5.1.1 The DISTRICT agrees to pay the CONSULTANT an amount equal to One Hundred Seventy-Seven Four Hundred dollars and no cents (\$177,400.00) for professional services to complete the Phase 2 activities of the Prospective Purchaser Agreement/Consent Decree, described in Exhibits A and B as amended. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed \$227,400.00 without prior written approval of the Districts.

2. Except as set forth herein, the Agreement is ratified and affirmed in all respects.

CDM SMITH, INC.


Authorized Signature

04-243650

Federal Tax I.D. Number

Date January 23, 2013

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1

Michael S. Kuenzi, Director

Date _____

TRI-CITY SERVICE DISTRICT

Michael S. Kuenzi, Director

Date _____

AMENDMENT 1
EXHIBIT A
TO AGREEMENT BETWEEN
DISTRICT AND CONSULTANT

For the

Blue Heron Paper Company Remedial Investigation/Feasibility Study

This is an exhibit attached to and made a part of the Agreement dated _____, 2013, between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and TRI-CITY SERVICE DISTRICT, both county service districts formed under Oregon Revised Statutes (“ORS”) 451 (the “DISTRICT”) and CDM Smith, Inc., a Massachusetts corporation (the “CONSULTANT”) for professional services.

Scope of Work

Task 1 – Project and Quality Management

Task 1 covers the general project management activities such as: client communications and meetings, development of progress reports, project file maintenance, invoicing, and staffing. This task is a continuation of the project management task that was scoped for the RI Proposal and RI Work Plan phase of the project. The scope and level of effort for this task is being revised to reflect the anticipated level of effort necessary to complete the project through the RI.

Assumptions: In preparing this cost estimate, CDM Smith assumes this task will cover the months of January 2013 through August 2013. We anticipate attending up to two meetings, one with WES and a second meeting with WES and ODEQ. Other than meetings, we estimate expending approximately 18 hours monthly on average for the project management task.

Task 4 – Remedial Investigation Studies

Task 4a – Field Investigation

The scope of the field investigation is detailed in the draft RI Work Plan dated November 21, 2012. The elements of the work plan that pertain to the field investigation are briefly as follows:

- Surface Soil Sampling – Collection and analysis of three composite surface soil samples.
- Groundwater Quality Investigation – Installation and sampling of five monitoring wells.
- Surface Water Sampling – Collection and analysis of four surface water samples, one from the ASB and three from the wetland.
- Topographic Survey – Conduct a topographic survey across the ASB site. The area within and adjacent to the ASB and the area between the ASB and the Willamette River will be surveyed to 0.5 foot intervals. The area north of the ASB will be contoured to 5 foot intervals. Other features to be surveyed will include the existing fence, road pavement edges, the pump station, and boundary lines.
- Monitoring Well Survey – Survey the location and elevation of installed monitoring wells. Staff gauges installed in the ASB and wetland will also be surveyed.

- **Water Level Monitoring** – To refine the conceptual site model, surface water and groundwater levels will be manually measured in the five newly installed monitoring wells and at the two staff gauges. In addition, datalogging pressure transducers will be installed in three monitoring wells and a stilling tube at the wetland staff gauge to continuously record water levels over the course of one month.
- **Laboratory Analysis** – Surface water and groundwater samples will be submitted for analysis, as detailed in the draft RI Work Plan.

Assumptions:

1. It will not be necessary to utilize a boat for sampling or to install staff gauges.
2. Monitoring wells installation locations will be accessible with and installed by a mid-sized track Geoprobe rig. It will not be necessary to remove fencing in order to access the well locations.
3. Soil cuttings will not need to be drummed and will be spread on the ground surface adjacent to the well location.
4. The monitoring well construction assumes 2-inch diameter wells, constructed with 10 feet of prepacked screen. Four of the monitoring wells are estimated at 20 feet deep and one well at 25 feet deep.
5. Four of the monitoring wells will be completed with above ground locking monuments, each protected by three bollards set in concrete. The fifth well will be completed with a traffic-rated flush monument.
6. Well construction is estimated to require two days to complete and well development another two days to complete.
7. Up to four drums of decontamination and purge water will be disposed of as nonhazardous waste.
8. The scope of work will follow our draft RI Work Plan dated November 21, 2012.
9. Analytical laboratory work will be conducted on a standard turnaround.

Task 4b – Human Health Risk Assessment

The RI will include a baseline human health risk assessment conducted per the requirements specified in OAR 340-122-0084, ODEQ guidance and EPA risk assessment guidance. The baseline human health risk assessment will be conducted in context with current and reasonably likely future land and water uses and under the assumption of no action or an action that leads to a greater exposure scenario.

Task 4c – Ecological Risk Assessment

A Level I Scoping and Level II Screening Ecological Risk Assessment will be completed in context of current and reasonably likely future land and water uses.

Ecological Risk Assessment Assumptions:

1. The media and pathways identified during in the conceptual site model of the RI Proposal are the only ones that will need to be addressed in the Level II analysis.
2. The contaminants of potential concern (CPECs) to be addressed in the Level II analysis are limited to those are to be analyzed as outlined in the RI Work Plan and as identified during the Phase 2 ESA.

3. The ASB sludge is to be treated as sediment due to it being covered with water in a pond like setting. ODEQ Ecological Screening Level Values for sediment will be used. Portland Harbor ODEQ agreed upon screening level values may also be used for comparison. It may be necessary to use Massachusetts values for screening of petroleum hydrocarbon sample results.
4. Surface water analytical results will be compared to ODEQ and USEPA ecological screening values.
5. Soil samples around the lagoon are to be sampled and screened against ODEQ ecological screening level values.

Task 5 – Remedial Investigation Report Development

CDM Smith will develop a draft RI report per the Work Plan schedule. The report will include a summary of the site history and prior investigations. The work completed per Task 4 above and findings will be detailed in the Report. The risk assessments will be included as appendices to the report. The RI will present a comprehensive evaluation of the nature and extent of contamination, including an evaluation of the magnitude of impact to various media, and environmental fate and transport of contaminants and various media.

Assumptions: CDM Smith will deliver a Draft RI report to WES for review and comment. As in the past, we anticipate that WES's comments on the Draft RI report will be relatively minimal in nature. Based on this, our schedule assumes that the report will be transmitted to WES approximately two weeks before it is due to DEQ and that WES provides its comments to CDM Smith no later than one week later. CDM Smith will incorporate the comments and transmit the Draft RI Report to ODEQ one week after receiving WES' comments. CDM Smith will address DEQ comments and deliver a Final RI report to WES for submission to DEQ. No more than one round of draft reports is anticipated for each of these submittals.

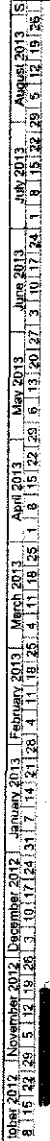
Task 6 - Assistance with Conceptual Design for Redevelopment

CDM Smith will assist WES and the City of West Linn in the conceptual design for redevelopment of the site. Currently, the City of West Linn is developing a broad list of development scenarios. CDM Smith will provide assistance in reviewing and commenting on the feasibility of the different scenarios being considered, as well as providing order of magnitude costs. We anticipate attending one meeting with WES and West Linn to discuss the options being considered.

Assumptions: The level of effort for this task will be dependent upon the number of alternatives the City considers, the number of iterations of alternative lists that are developed, and the level of detail required for any cost estimates. We have assumed expending up to 52 hours on this task, including attending one meeting.

Amendment I Exhibit B

ID	Task Name	Duration	Start	Finish
1	Draft RI Work Plan	34 days	Fri 10/19/12	Wed 11/21/12
2	Comments from ODEQ on Draft RI Work Plan	49 days	Thu 11/22/12	Wed 1/9/13
3	Final RI Work Plan	7 days	Thu 1/10/13	Wed 1/16/13
4	RI Field Work Coordination, Mobilization, Investigation, and Laboratory Analysis	126 days	Thu 1/17/13	Wed 5/22/13
5	Data Evaluation, Risk Assessments and Draft RI Report	30 days	Thu 5/23/13	Fri 6/21/13
6	Comments from ODEQ on Draft RI Report	32 days	Mon 6/24/13	Thu 7/25/13
7	Final RI Report	29 days	Fri 7/26/13	Fri 8/23/13



Project: Schedule
Date: Tue 1/15/13

Task Split

Summary

Project Summary

External Tasks

External Milestone

Deadline

Blue Heron Paper Company
Aerated Stabilization Basin (ASB) Site
West Linn, Oregon

Estimated RI Project Schedule





Beyond clean water.

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

August 23, 2012

Board of Commissioners
Clackamas County

Members of the Board:

**AGREEMENT TO FURNISH CONSULTANT SERVICES TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND
THE TRI-CITY SERVICE DISTRICT FOR THE
BLUE HERON REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

Clackamas County Service District No. 1 and the Tri-City Service District (the Districts) have entered into a Prospective Purchaser Agreement/Consent Order (PPA) with the Oregon Department of Environmental Quality (ODEQ) for the Blue Heron Property. As part of the PPA, ODEQ has developed a Scope of Work (SOW) for completion of a Remedial Investigation & Feasibility Study (RI/FS) that the Districts must complete as part of the PPA. Water Environment Services (WES), on behalf of the Districts, solicited proposals to hire a Consultant to provide professional services to complete the RI/FS. Seven proposals were received and, after review by project team, CDM Smith was selected to complete the project.

CDM Smith will work with WES staff to complete all RI/FS activities identified in the PPA Scope of Work (SOW). Each deliverable identified in the SOW is subject to DEQ review and approval before proceeding to the next, therefore, WES is proposing to complete the RI/FS work under this agreement in Phases, with each phase negotiated regarding scope and budget. The following is a summary of the Phases anticipated under this contract:

- Phase 1: Prepare and complete the Remedial Investigation Proposal and Remedial Investigation Work Plan per ODEQ requirements
- Phase 2: Completion of RI Work and submittal of RI report to ODEQ
- Phase 3: Completion of Risk Assessment and Feasibility Study

CDM Smith has provided WES with a scope of work and budget of \$50,000 for Phase 1. WES staff anticipates the entire RI/FS project to be approximately \$250,000. WES staff will present each additional scope and contract for Phases 2 and 3 to the Board for approval.



WATER
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SERVICES

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Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

January 26, 2012

Board of County Commissioners
Clackamas County
As Governing Body of
The Clackamas County Service District No. 1
And
The Tri-City Service District

Members of the Board:

**APPROVAL OF AN AGREEMENT TO JOINTLY
PURCHASE REAL PROPERTY**

Clackamas County Service District No. 1 (“CCSD#1”) and the Tri-City Service District (“TCSD”) staff come before the Board seeking approval of the potential acquisition of real property located in West Linn, Oregon currently owned by the Blue Heron bankruptcy estate. Attached hereto is a proposed purchase and sale agreement between the Blue Heron estate and the Districts (the “Agreement”) signed by the US Trustee. The Districts will hold the property jointly for their shared benefit and utilization in addressing long term growth and regulatory needs. This real property matter was discussed with the Board in executive study sessions on May 17, 2011, October 11, 2011, and December 13, 2011. At the October 11 meeting staff was authorized to negotiate a proposed agreement with a purchase price of not more than \$3 million.

The Blue Heron Company has been in bankruptcy since December 2009. In May 2011 the bankruptcy court ordered that the company convert to a forced liquidation under Chapter 7 and assets begin to be sold. The US Trustee, on behalf of the estate, engaged a broker to market the real property assets of the company.

The Districts are interested in the approximately 38 acre site in West Linn (the “Property”), where the company used lagoons to treat industrial wastewater. The Property includes a substantial outfall at a deep point of the Willamette River and associated NPDES (Clean Water Act) permit. The permit is rated for discharges up to 12 million gallons per day, approximately the same size as either the Kellogg or Tri-City plants operated by the Districts, and sizeable heat load and other Total Maximum Daily Load (“TMDL”) allocations that should be more than sufficient to meet future needs.

TMDL allocations, especially temperature limits, already assigned by the Oregon Department of Environmental Quality (“DEQ”) are currently substantial drivers in capital planning for the Districts. The districts will be required to make significant new capital and operational expenditures because they do not have the ability to increase heat discharges into the Willamette River commensurate with expected flow increases. Planning-level estimates for constructing facilities to comply with existing regulatory TMDL restrictions are at ~\$130 million. Obtaining the Property and utilizing the outfall and associated permit appears to be a much cheaper

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alternative, and would allow the Districts to realize potential savings of ~\$80 million. Rate modeling suggests this equals a savings of approximately \$10 per each district customer per month for at least the next 20 years.

The Trustee initially suggested a purchase price of \$12 million as an industrial site and later provided an appraisal of the property with a value of up to \$2.9 million outside of industrial uses. WES staff has been in negotiations with the Trustee since June 2011. Staff has reached tentative agreement on all major terms subject to BCC approval, and review by the bankruptcy court. In summary, the Agreement provides for a purchase price of \$1.75 million for the Property and the conveyance pipe running from the southern border of the Blue Heron Mill site to the Property and all associated easements.

The Agreement contains appropriate due diligence time periods and contingencies, and contemplates closing the transaction 75 days after execution unless one of the contingencies are triggered. As part of the due diligence process, WES staff is prepared to undertake a full Level 2 Environmental Review, which will include sampling of the settled materials at the bottom of the lagoons, diver inspection of the outfall, and sampling of relevant areas of the Property. The Board will be kept informed of any material findings in the due diligence process if authorized to proceed with the transaction.

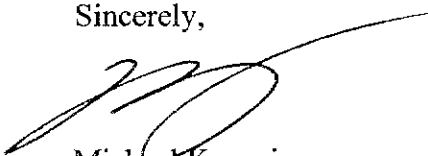
While additional steps remain, including public involvement with the City of West Linn and continued discussions with DEQ regarding regulatory issues, staff feels that the proposed transaction represents a high value proposition for ratepayers with an excellent return on the costs of acquisition and remediation.

Recommendation:

1. Staff respectfully requests the Board, acting as the governing body of CCSD#1, approve the proposed transaction.
2. Staff respectfully requests the Board, acting as the governing body of TCSD, approve the proposed transaction.

For purposes of clarity of authorization, staff recommends that the Board vote on the matter once as the governing body of CCSD#1 and once as the governing body of TCSD.

Sincerely,



Michael Kuenzi
Director, Water Environment Services