

AGENDA

Thursday, October 3, 2019 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2019-87

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. HOUSING AUTHORITY DISCUSSION ITEM

1. Approval of the Hillside Park Master Plan Design Concept (Jill Smith, Housing Authority Director)

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

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

A. Health, Housing & Human Services

1. Approval of Sub-recipient Agreement with the Inn True Home and the Community Development Division for ESG Funding for the True Home Rapid Re-Housing Services – *Community Development*
2. Approval of an Intergovernmental Agreement between the Housing and Community Development Division and the City of Sandy for ADA Sidewalk Improvements in SE Sandy – *Community Development*
3. Approval of Revenue Grant Agreement with State of Oregon, Early Learning Division for Kindergarten Readiness Partnership & Innovation Program – *Children Family & Community Connections*
4. Approval for Agreement No. 9335 to a Revenue Agreement with Moda Health Plan, Inc., for Provider Services to Members Enrolled with Health Benefits Plan – *Health Centers*
5. Approval of a Personal Services Contract with Central City Concern for the Law Enforcement Assisted Diversion (LEAD) program – *H3S Admin*

6. Approval for an Intergovernmental Grant Agreement with the State of Oregon Criminal Justice Commission (CJC) to Provide Mental Health Court (MHC) Services – *Health Centers*
7. Approval of a Personal Services Contract with Central City Concern for the Law Enforcement Assisted Diversion (LEAD) Program – *H3S Admin*

B. Department of Transportation & Development

1. Approval of an Intergovernmental Grant Agreement with Metro for the Regional Travel Options Grant for a Safe Routes to School Program Coordinator
2. Approval of an Intergovernmental Grant Agreement and Acceptance of the Grant Award for the Regional Travel Options Grant for Bicycle Parking in Oak Grove

C. Elected Officials

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

D. Technology Services

1. Approval for Service Level Agreement Amendment No. 5 between Clackamas Broadband eXchange and LS Networks for a New Dark Fiber Connection

IV. WATER ENVIRONMENT SERVICES

1. Approval of Personal Services Contract with Lower Columbia Estuary Partnership to Provide Watershed Health Education Support Services - *Procurement*

V. COUNTY ADMINISTRATOR UPDATE

VI. COMMISSIONERS COMMUNICATION

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

October 3, 2019

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Request Approval of the Hillside Park Master Plan Design Concept

Purpose/Outcomes	Approval of the Hillside Park Master Plan Design Concept
Dollar Amount and Fiscal Impact	The Hillside Master Plan process was funded by a Metro Planning Grant in the amount of \$214,000
Funding Source(s)	Metro Community Planning and Development Grant
Duration	June 2018 through present
Previous Board Action	The Board received updates by Policy Session on the Hillside Park Master Plan on July 9, August 8 and October 1, 2019
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
Contact Person	Jill Smith, Executive Director, Housing Authority 503-742-5336
Contract Number	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of Health, Housing and Human Services Department request approval of the Hillside Park Master Plan Design Concept.

Hillside Park is a public housing community serving extremely low income families and individuals. The site consists of 100 units at the end of their useful life. The 16-acre site where Hillside Park is located is underutilized and ideal for reinvestment to ensure long-term affordability and new mixed use and mixed-income housing.

In November 2017, the Housing Authority of Clackamas County (HACC) was awarded \$214,000 in funding from Metro for the Master Plan for the redevelopment of the Hillside Public Housing community including the following deliverables that lead to the vision for the site:

- Outreach/Communications (public involvement) Strategy
- Detailed site analysis
- Development capacity and market analysis
- Preferred Concept Design
- Financial Feasibility and Pro Forma Analysis
- Financing Plan for Federal, State, and local funding applications
- Economic Impact Analysis for job creation and economic opportunities
- Health Impact Analysis

HACC will use the Master Plan to leverage federal, state and local funding opportunities including the Rental Assistance Demonstration (RAD) program for Public Housing properties, HUD Section 18 Demolition/Disposition program, Metro Affordable Housing Bond, Low Income Housing Tax Credits (LIHTC), New Markets Tax Credits (NMTC), and a variety of local and national funding and grant opportunities. Each of these funding programs require significant site planning, community engagement, and financial feasibility modeling in order to be competitive.

The Master Plan for Hillside officially kicked off on June 27, 2018 at the Housing Authority's 80th Anniversary Celebration. Public engagement for the plan included:

- Stakeholder Interviews
- Hillside Resident Listening Session
- Hillside Site Investigations
- Community Visioning Workshops
- Sustainability Workshop
- Hillside Park Door to Door Outreach
- Community Design Workshop
- Community Open House – 3 Design Concepts
- Final/Wrap Up meeting with Residents and Community (October 2019)

RECOMMENDATION:

Staff recommends the Board approve the Hillside Master Plan Design Concept.

Respectfully submitted,

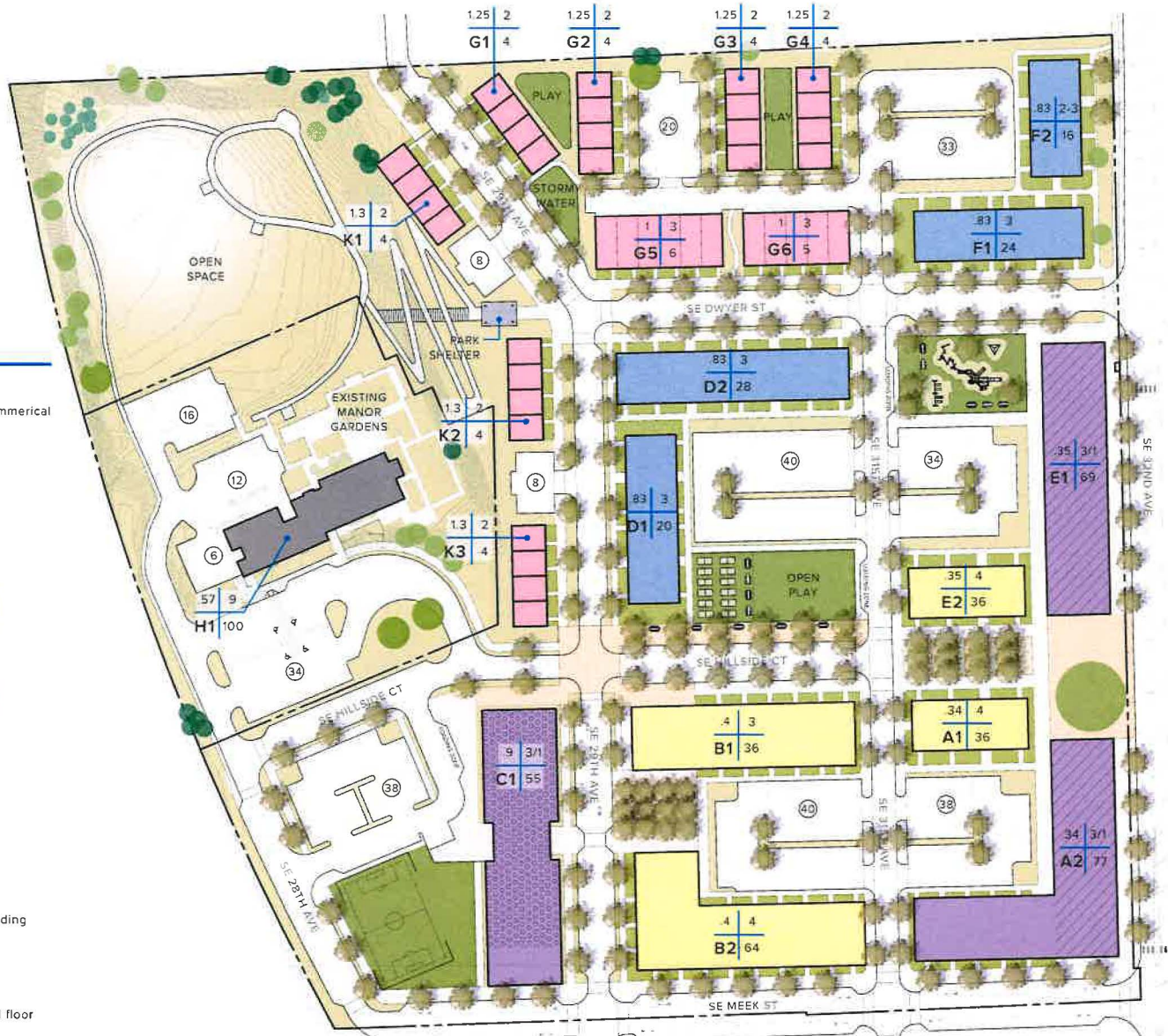


Richard Swift, HAS Deputy Director / For

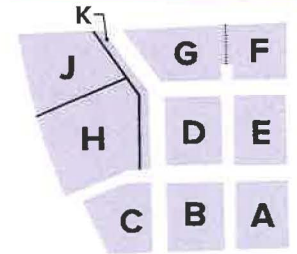
Richard Swift, Director
Health, Housing and Human Services

LEGEND

- parking ratio
 - 5 3/1 — # of stories / over commercial
 - E1 50 — # of units
 - Building
-
- Proposed New Tree
- 
-
- Existing Deciduous
- <12"
 - >12"
 - >30"
-
- Existing Conifer
- <12"
 - >12"
 - >30"
-
- Townhouse
 - Walk-Up Apartment
 - Apartment Building (residential all floors)
 - Mixed-Use Apartment Building
 - Commercial ground floor
 - Community center ground floor



KEY PLAN



TABULATIONS

Lot A	= 1.25 ac	100 du/ac
Lot B	= 1.39 ac	71 du/ac
Lot C	= 1.36 ac	40 du/ac
Lot D	= 1.38 ac	34 du/ac
Lot E	= 1.29 ac	81 du/ac
Lot F	= 1.05 ac	38 du/ac
Lot G	= 1.52 ac	17 du/ac
Lot H	= 2.68 ac	37 du/ac
Lot J	= 1.95 ac	0 du/ac
Lot K	= 0.85 ac	14 du/ac
Total	= 14.72 ac	

Hillside Manor (existing)	= 100 units
Hillside Park (replacement units)	= 100 units
Net New Units (to be developed)	= 400 units

Grand Total = 600 units

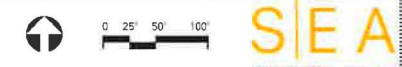
Off-street parking	= 327 stalls
On-street parking	= 163 stalls
Total	= 500 stalls

HILLSIDE MASTER PLAN

Design Option I 07.23.2019

REVISED MASTER PLAN OPTION

URBAN EDGES & URBAN GREENSPACES



October 3, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Sub-recipient Agreement with The Inn True Home and the
Community Development Division for
ESG Funding for the True Home Rapid Re-Housing services

Purpose/ Outcome	The Emergency Solutions Grant (ESG) program is designed to: improve existing homeless shelters; provide funds to operate emergency shelters; provide essential social services to homeless individuals and; provide homeless prevention and rapid re-housing assistance.
Dollar Amount and Fiscal Impact	Emergency Solutions Grant (ESG) funds of \$11,000 as a grant. No County General Funds are included in this Agreement
Funding Source	U.S. Department of Housing and Urban Development ESG funds
Duration	July 1, 2019 to June 30, 2020
Previous Board Action/ Review	May 2, 2019 approval of the 2019 One-Year Action Plan which included a funding recommendation of \$11,000 of ESG funds to be available for The Inn.
Strategic Plan Alignment	Increase self-sufficiency for our clients. Ensure safe, healthy and secure communities.
County Review	The Sub-recipient agreement was reviewed and approved by County Counsel on August 8, 2019.
Contact Person	Mark Sirois, Project Coordinator - Community Development: 503-655-8359
Contract No.	H3S 9441

BACKGROUND: The Community Development Division of the Health, Housing and Human Services Department requests the approval of a Sub-recipient Agreement for eligible rapid re-housing case management expenditures for The Inn True Home Rapid Re-Housing services in Clackamas County, OR. In December of 2016 The Inn applied for Emergency Solutions Grant (ESG) funding to operate a homeless youth shelter in Clackamas County. The Inn was awarded 3 years of funding for FY 2017, FY 2018 and FY 2019. Each year a new sub-recipient agreement is signed. The Inn has since closed the shelter and has requested that funds be used for rapid re-housing services. The Inn is in the process of changing the agency's name to True Home.

PROJECT OVERVIEW: The Inn True Home will provide Rapid Re-housing services including: Safety planning, Advocacy and assistance navigating systems, Case management, Crisis intervention, Information and Referral, Support groups and Counseling.

It is expected that the funding under this ESG contract will assist approximately 20 homeless youth to secure housing during the program year.

RECOMMENDATION: We recommend the approval of this Sub-recipient Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

 H3S deputy director/For

Richard Swift, Director
Health, Housing Human Services

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 20-018**

Project Name: **ESG Title IV-B**
Project Number: **To Be Assigned**

This Agreement is between Clackamas County, Oregon, acting by and through its Health, Housing and Human Services Department, Community Development Division ("COUNTY") and THE INN ("SUBRECIPIENT"), an Oregon Nonprofit Organization.

Clackamas County Data

Grant Accountant: Larry Crumbaker	Program Manager: Mark Sirois
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 Phone 503-742-5429 larrycru@co.clackamas.or.us	Clackamas County – Community Development 2051 Kaen Road, Suite 245 Oregon City, OR 97045 Phone 503-650-5664 marksir@clackamas.us

Subrecipient Data

Finance/Fiscal Representative: Diane Thomas	Program Representative: Kristy Wood
The Inn 8940 SE 72nd Ave Portland, Oregon 97206 (503) 234-8757 x2 dthomas@theinnhome.org	The Inn 8940 SE 72nd Ave Portland, Oregon 97206 (503) 724-9063 kristy@theinnhome.org
DUNS: 103014692	

RECITALS

1. This Agreement is entered into between COUNTY and SUBRECIPIENT to provide a basis for a cooperative working relationship for the purpose of implementing the Emergency Solutions Grant program ("ESG") contained in Subpart B of Title IV of the Stewart B. McKinney Homeless Assistance Act, and regulations adopted under this Act at 24 CFR Part 576, dated October 26, 2011, as amended, and Public Law 100-77 as amended. The ESG program is designed to: improve existing homeless shelters; provide funds to operate emergency shelters; provide essential social services to homeless individuals; and, provide homeless prevention and rapid re-housing assistance.
2. COUNTY has been awarded ESG funds from the United States Department of Housing and Urban Development ("HUD") authorized by Subpart B of Title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11371-11378.
3. Funds provided by COUNTY shall be used for eligible operating and maintenance expenditures for **True Home RRH Services** in Clackamas County, OR.
4. In response to a Congressional directive, HUD has required all recipients of Stewart B. McKinney Homeless Assistance Act funds to implement a Homeless Management Information System ("HMIS"). HMIS is a community-wide software solution that is designed to collect client-level information on the characteristics and service needs of youth experiencing homelessness.

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

AGREEMENT

1. **Term and Effective Date.** This Agreement becomes effective when it is signed by both Parties. The term of this Agreement is a period beginning **July 1, 2019 and expires June 30, 2020**, a total of twelve (12) months.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations, including Subpart B of Title IV of the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11371-11378. Furthermore, SUBRECIPIENT shall comply with the requirements of the ESG award number E19-UC-41-0001 (Federal award date: 7/15/19) that is the source of the grant funding, in addition to compliance with requirements of Title IV of the Code of Federal Regulations (CFR), Part 24, Sub-Part 576. A copy of that grant award has been provided to SUBRECIPIENT by COUNTY, which is attached to and made a part of this Agreement by this reference. SUBRECIPIENT shall further comply with any requirements required by HUD, together with any and all terms, conditions, and other obligations as may be required by the applicable local, State or Federal agencies providing funding for performance under this Agreement, whether or not specifically referenced herein. SUBRECIPIENT agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement including, but not limited to, executing all additional documentation necessary to comply with applicable State or Federal funding requirements.
4. **Grant Funds.** COUNTY's funding for this Agreement is the Emergency Solutions Grant (Catalogue of Federal Domestic Assistance [CFDA] #: 14.231) issued to COUNTY by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development (Federal Award Identification # E19-UC-41-0001). The maximum, not to exceed, grant amount COUNTY will pay is \$11,000.00. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request. Failure to comply with the terms of this Agreement may result in withholding of payment or termination of the Agreement.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be suspended or terminated prior to the expiration of its term by:
 - a. Written notice provided by COUNTY resulting from material failure by SUBRECIPIENT to comply with any term of this Agreement; or,
 - b. Mutual agreement by COUNTY and SUBRECIPIENT; or,
 - c. Written notice provided by COUNTY that HUD has determined that ESG funds are no longer available for the purposes outlined in this Agreement.

Upon completion of improvements or upon termination of this Agreement, any unexpended balances of ESG funds shall remain with COUNTY.

7. **Funds Available and Authorized.** COUNTY certifies that funds sufficient to pay for this Agreement have been obligated to COUNTY. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on COUNTY receiving appropriations or other expenditure authority sufficient to allow COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Nonprofit status.** SUBRECIPIENT warrants that it is, and shall remain during the performance of this Agreement, a private nonprofit Organization as defined in the Regulations, including:
 - a) That it is described in Section 501(c) of the Internal Revenue Code of 1954;
 - b) That it is exempt from taxation under Subtitle A of the Internal Revenue Code of 1954;
 - c) That it has an accounting system and a voluntary board; and
 - d) That it practices nondiscrimination in the provision of assistance to the homeless.
10. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of SUBRECIPIENT. Additionally, SUBRECIPIENT agrees to use funds provided only for eligible activities as described in 24 CFR 576 Subpart B.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.

- f) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- g) **Indirect Cost Recovery.** Indirect cost recovery is statutorily unavailable on this award.
- h) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- i) **Payment.** SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- j) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit E.
- k) **Evaluation.** SUBRECIPIENT agrees to participate with COUNTY in any evaluation project or performance report, as designed by COUNTY or HUD, and to make available all information required by any such evaluation process.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by COUNTY or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Specific Conditions.** None.
- n) **Grantor Recognition.** SUBRECIPIENT shall insure recognition of the role of COUNTY in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, SUBRECIPIENT will include reference to the support provided herein in all publications made possible with funds available under this Agreement.
- o) **Supplanting.** The funding made available under this Agreement shall not be utilized by SUBRECIPIENT to reduce substantially (i.e. supplant) the amount of local financial support for shelter and assistance activities below the level of such support prior to the availability of funds under this Agreement.
- p) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits D & G), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 90 calendar days after the end date of this agreement.
- q) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <https://www.sam.gov>.
- r) **Suspension and Debarment.** SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or

otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- s) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- t) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- u) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.

COUNTY will monitor the performance of SUBRECIPIENT against goals and performance standards required herein. Substandard performance as determined by COUNTY will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by SUBRECIPIENT within ten (10) days after being notified by COUNTY, Agreement termination and all funding will end. SUBRECIPIENT must return any unused funds promptly.

- v) **Records to be Maintained.** SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR Part 576.500 that are pertinent to the activities to be funded under this Agreement. Such records shall include but are not limited to:
1. Client Eligibility Determinations and documentation;
 2. Rental Assistance Agreements;
 3. Service and assistance provided;

4. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with ESG funds; Financial records as required by 24 CFR Part 576 Subpart F.
 5. Client Data. SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but is not limited to: client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to COUNTY monitors or their designees for review upon request.
 6. Disclosure. SUBRECIPIENT understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of COUNTY's or SUBRECIPIENT's responsibilities with respect to services provided under this Agreement, is prohibited unless consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 7. Property Records. SUBRECIPIENT shall maintain real property inventory records which clearly identify properties purchased, improved, or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8), as applicable.
- w) **Record Retention.** SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for five (5) years after final disposition of such property. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Notwithstanding the above, if there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.
- x) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for ESG, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to COUNTY, as grantee, under those grant documents.
- y) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.
- z) **Program Income.** SUBRECIPIENT shall report monthly all program income as defined at 2 CFR 200.80 generated by activities carried out with ESG funds made available under this Agreement. By way of further limitations, SUBRECIPIENT may use such income during the Agreement period for activities permitted under this Agreement and shall reduce request for additional funds by the amount of any such program income balances on hand. All unused program income shall be returned to COUNTY at the end of the Agreement period.

11. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in

Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT. See Exhibit A for additional requirements.

- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c) **Lead-Based Paint.** SUBRECIPIENT agrees to comply with the Lead-Based Paint Poisoning Prevention Act and implementing regulations at 24 CFR Part 35.
- d) **Drug-Free Workplace Act of 1988.** SUBRECIPIENT agrees to comply with the requirements of 24 CFR Part 24 concerning the Drug-Free Workplace Act of 1988 by administering in good faith a policy designed to ensure that its facilities are free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries.
- e) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- f) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request COUNTY to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. COUNTY shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by COUNTY shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- g) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- h) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.

12. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

SUBRECIPIENT shall comply with the procurement standards applying to subrecipients under this Federal award contained in 2 CFR 200.318-326.

- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals ("RFP") for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

13. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into COUNTY's next fiscal year, COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its commissioners, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, 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 COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.

- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the 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.
- 4) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, commissioners, officers, and employees" as an additional insured.
- 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 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.
- 6) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 7) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. COUNTY and its officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. The certificate will specify that all insurance-related provisions within the Agreement have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- 8) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss.
- 9) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- d) **Subagreement.** SUBRECIPIENT shall not enter into any subagreements with any agency or individual in the performance of this Agreement.
- e) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- f) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

14. Other Federal Requirements

- a) The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a). Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135 apply.

except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

- b) **Hatch Act.** SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of the Title V United States Code.
- c) **Affirmative outreach.** SUBRECIPIENT must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services. SUBRECIPIENT must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, SUBRECIPIENT is also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency ("LEP") persons.
- d) **Uniform Administrative Requirements.** The requirements of 2 CFR part 200 apply to SUBRECIPIENT; program income is to be used as the nonfederal share under 2 CFR 200.307(e). These regulations include allowable costs and non-Federal audit requirements.
- e) **Religious Organization.** SUBRECIPIENT agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 576.406.
- f) **Environmental review responsibilities.**
 - a. Activities under this part are subject to environmental review by HUD under 24 CFR Part 50. SUBRECIPIENT shall supply all available, relevant information necessary for COUNTY to perform for each property any environmental review required by 24 CFR part 50. At the instruction of COUNTY SUBRECIPIENT may be required to carry out mitigating measures required by COUNTY or select alternate eligible property. COUNTY may eliminate from consideration any application that would require an Environmental Impact Statement ("EIS").
 - b. SUBRECIPIENT, or any contractor of SUBRECIPIENT, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for eligible activities under this part, until COUNTY has performed an environmental review under 24 CFR part 50 and SUBRECIPIENT has received COUNTY approval of the property.
- g) **Davis-Bacon Act.** The provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-5) do not apply to the ESG program.
- h) **Procurement of Recovered Materials.** SUBRECIPIENT and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- i) **Displacement, Relocation, and Acquisition.** Consistent with the other goals and objectives of ESG, SUBRECIPIENT must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under ESG.
- j) **Temporary relocation not permitted.** No tenant-occupant of housing (a dwelling unit) that is converted into an emergency shelter may be required to relocate temporarily for a project assisted with ESG funds, or be required to move to another unit in the same building/complex. When a tenant moves for a project assisted with ESG funds under conditions that trigger the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ("URA"), 42 U.S.C. 4601–4655, as described in paragraph (c) of this section, the tenant should be treated as permanently displaced and offered relocation assistance and payments consistent with that paragraph.
- k) **Non-displacement.** SUBRECIPIENT agrees to minimize displacement and comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and implementing regulations at 49 CFR Part 24 and (b) the requirements of 24 CFR 576.408 governing the ESG program. SUBRECIPIENT shall provide relocation assistance to persons (families, individuals, businesses, nonprofit organizations, and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an ESG-assisted project. SUBRECIPIENT also agrees to comply with applicable COUNTY ordinances, resolutions, and policies concerning the displacement of persons from their residences. Any activity which may result in a displaced person (defined in paragraph l. of this section) must be reported to COUNTY prior to the commencement of the activity. COUNTY shall determine the relocation assistance as provided in 24 CFR 576.408(c). All such assistance shall be subtracted from the ESG funds provided to SUBRECIPIENT.
- l) **Displaced Person.** For purposes of paragraph k. of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership, or association) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under the ESG program. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property.
- m) **Real property acquisition requirements.** The acquisition of real property, whether funded privately or publicly, for a project assisted with ESG funds is subject to the URA and Federal government wide regulations at 49 CFR Part 24, subpart B.
- n) **Appeals.** A person who disagrees with COUNTY'S (or SUBRECIPIENT'S, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the recipient under 49 CFR 24.10. A low-income person who disagrees with the recipient's determination may submit a written request for review of that determination by the appropriate HUD field office.

15. Civil Rights

- a) **Compliance.** SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- b) **Nondiscrimination.** SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, nation origin, sex, disability, or other

handicap, age, marital/familial status, or status with regard to public assistance. SUBRECIPIENT will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by COUNTY setting forth the provisions of this nondiscrimination clause.

- c) **Section 504.** SUBRECIPIENT agrees to comply with any Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1974, which prohibits discrimination against the handicapped in any Federally-assisted program. COUNTY shall provide SUBRECIPIENT with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

16. Affirmative Action

- a) **Plan.** SUBRECIPIENT agrees that it shall be committed to carry out pursuant to COUNTY's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965.
- b) **Women and Minority Business Enterprises.** SUBRECIPIENT will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. SUBRECIPIENT may rely on written representation by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c) **Access to Records.** SUBRECIPIENT shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by COUNTY, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.
- d) **Notifications.** SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understandings, a notice, provided by COUNTY, advising the labor union or worker's representative of SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) **EEO/AA Statement.** SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative Action employer.
- f) **Subcontracting Provisions.** SUBRECIPIENT will include the provisions of Paragraph 23, Civil Rights, and 24, Affirmative Action, in every subcontract or purchase orders, specifically or by reference, so that such provisions will be binding upon each of its subrecipients or subcontractors.

17. Employment Restrctions

- a) **Prohibited Activity.** SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities, sectarian or religious activities, lobbying, political patronage, and nepotism activities.

- b) **Labor Standards.** SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with Davis-Bacon Act as amended, the provisions of Agreement: Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. SUBRECIPIENT shall maintain documentation which demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to COUNTY for review upon request. SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all Agreements engaged under Agreements in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with Federal requirements adopted by COUNTY pertaining to such Agreements and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey-workers; provide, that if wage rates higher than those required under the regulations are imposed by state or local laws, nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. SUBRECIPIENT will cause or require to be inserted in full, in all Agreements subject to such regulations, provisions meeting the requirements of this paragraph.
- c) **Job Training and Employment for Low-income Residents -Section 3**
- i. **Compliance.** Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon COUNTY, SUBRECIPIENT, and any of SUBRECIPIENT's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the COUNTY, SUBRECIPIENT, and any of SUBRECIPIENT's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. SUBRECIPIENT certifies and agrees that no agreements or disability exist which would prevent compliance with these requirements.
- ii. SUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:
- "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low-and very low-income residents of the project area and Agreements for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."*
- iii. SUBRECIPIENT further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation, housing construction, or other public construction project are given to low- and very low-income persons residing within in the metropolitan area in which the ESG funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award Agreements for work undertaken in connection to housing rehabilitation, housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which ESG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or neighborhood in which the project is located, and to low- and very

low-income participants in other HUD programs.

- iv. **SUBRECIPIENT** certifies and agrees that no agreements or legal incapacity exists which would prevent compliance with these requirements.
 - v. **Notifications.** SUBRECIPIENT agrees to send to each labor organization or representative of worker with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
 - vi. **Subcontracts.** SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontract is in violation of regulations issued by the grantor agency. SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
18. **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of COUNTY.
19. **Independent Status.** SUBRECIPIENT is independent of COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of COUNTY and undertakes this work independent from the control and direction of COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind COUNTY in any transaction or activity.
20. **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
21. **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
22. **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
23. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
24. **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.

(Signature Page Follows)

AGREED as of the Effective Date.

CLACKAMAS COUNTY

THE INN

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

Signing on Behalf of the Board,

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

By: Kristy Wood
Kristy Wood, Executive Director

Dated: 8-21-19

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: _____
County Counsel

Dated: _____

- Exhibit A: SUBRECIPIENT Statement of Program Objectives & Requirements
- Exhibit A.1 SUBRECIPIENT Scope of Work
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Subrecipient Performance Reporting
- Exhibit F: Required Certifications
- Exhibit G: Final Financial Report

- Attachment A: ESG Policies

October 3, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
the Housing and Community Development Division and the City of Sandy
for ADA Sidewalk Improvements in SE Sandy

Purpose/Outcomes	The Agreement will allow for the Housing and Community Development Division to work with the City of Sandy and their hired engineer to complete the construction of ADA sidewalk crossings in SE Sandy.
Dollar Amount and Fiscal Impact	\$75,000 of Community Development Block Grant funds and approximately \$30,000 of City of Sandy funds.
Funding Source	U.S. Department of Housing and Urban Development No County General Funds are involved.
Duration	Effective September 2019 through June 2020
Previous Board Action	2018 Action Plan and the 3 -Year Funding Recommendations were approved by the BCC on May 3, 2018 agenda item 050318 - A1
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Counsel Review	The agreement was reviewed and approved by County Counsel on August 7, 2019.
Contact Person	Mark Sirois, Housing and Community Development - (503) 655-5664
Contract No.	H3S 9439

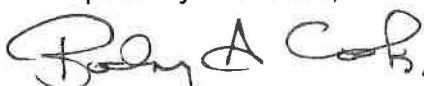
BACKGROUND:

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of this Intergovernmental Agreement with the City of Sandy for the SE Sandy ADA sidewalks Project. The Agreement determines the roles of the City of Sandy and the County regarding CDBG funding of \$75,000 and City match of approximately \$30,000, contract administration, project management as well as the duties of the hired engineer during project construction.

RECOMMENDATION:

We recommend the approval of this Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

 H3S Deputy Director/For

Richard Swift, Director

Health, Housing and Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF SANDY**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Sandy ("Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

The County, by and through its Community Development division, and Agency intend to engage in a project (the "Project") for the construction of up to 30 sidewalk crossing ramps to improve pedestrian safety and improve mobility for persons with disabilities. New sidewalk crossings will be in compliance with the Americans with Disabilities Act (ADA) standards. The project area is bounded by US 26/Pioneer Blvd. on the North, Langensand Road on the East, OR-211 on the West and Gary St. on the South in in the City of Sandy. These improvements are referred to as the SE Sandy ADA Improvements Project (the "Project").

The County will provide partial funding for the Project, and will be responsible for bidding, negotiating, and managing any public contracts with third parties necessary to complete the Project. Agency will be responsible for matching a certain percentage of the total Project cost, as detailed in this Agreement, and for any costs incurred on the Project in excess of the funds contributed by the County, and will coordinate with County and any third party the County contracts with to complete the Project.

The Project meets the U.S. Department of Housing and Urban Development Office ("HUD") requirements for a National Objective, by using federal Community Development Block Grant ("CDBG") funds to improve the targeted Project area in the City of Sandy is a Low-Mod Benefit Area based on Census Tract and Block Group information. See Exhibit A(1) for the Project Map Area.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or June 30, 2020, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to provide U.S. Department of Housing Urban Development ("HUD"), Community Development Block Grant ("CDBG") funds toward the Project at the sum not to exceed **Seventy Five Thousand Dollars (\$75,000.00)** ("CDBG Funds") for accomplishing the Work required by this Agreement. The CDBG

Intergovernmental Agreement
SE Sandy ADA Improvements Project – CD#53636

funds allocated for the Project will be paid directly to any contractor hired by County to perform the Work ("Contractor") upon full execution of a construction contract. The Agency agrees to pay all Project costs in excess of the CDBG funds, including any change orders or other additional expenses related to the construction contract, once the Contractor is hired.

The County will not pay for 100% of the Project's costs using CDBG funds. The County has adopted the strategy of requiring Agencies (public and private) to provide a minimum 20% Match Contributions for a Construction Project. This financially supports the full funding of proposed Construction Projects. Match Contributions become part of the Project, subject to the County's review and approval. The Agency may submit Match Expenditures as part of their 20% contribution toward the Project's costs. Match Expenditures may include the following: assigned Agency staff time (hourly rate and benefits), materials, purchased products and equipment owned or rented by the Agency.

The parties anticipate that the total costs of completing the Project will not exceed the sum of \$120,000 dollars. If, following receipt of construction bid proposals as part of the County's public bid process for construction or during performance of the construction contract, either party determines the Project cannot be completed with available funds, the County and Agency agree to negotiate, in good faith, a possible modification of the Project or this Agreement to accommodate funding limitations. If the parties are unable to reach an agreement as to a modified Project or amendment to the Agreement, this Agreement shall terminate, the parties shall bear their own costs incurred as of the date of termination, and the parties shall have no further obligations regarding this Agreement.

4. **Payment.** The Contractor will submit monthly invoices jointly to the Agency and County for work performed to complete the Project and shall include the total amount billed to date prior to the current invoice. Invoices shall describe all work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to the Contractor directly following the County's review and approval of invoices submitted. County shall make payment(s) to the Contractor in the time and manner set forth in the construction contract with Contractor. The County CDBG funds will be used first to pay the Contractor. The Agency funds will be used second to pay the Contractor. Once the County has expended all of the CDBG funds allocated for the Project, the Agency will pay all amounts necessary to complete the Project. The County will invoice the Agency for the balance of the unpaid Project costs within 30 days of the completed work. The County will reconcile all Project funds through the completion of the work. The County will not pay the Contractor any amount in excess of the maximum compensation described in Section 3, above. All amounts due to the Contractor in excess of the maximum compensation described in Section 3 will be the sole responsibility of Agency.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.

Intergovernmental Agreement
SE Sandy ADA Improvements Project – CD#53636

- B. *County Representations and Warranties*: County represents and warrants to Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The Agency may terminate this Agreement in the event the Agency fails to receive expenditure authority sufficient to allow the Agency, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the Agency is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its

Intergovernmental Agreement
SE Sandy ADA Improvements Project – CD#53636

officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.
9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
 - A. Mark Sirois or their designee will act as liaison for the County.

Contact Information:

Clackamas County Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

Mike Walker or their designee will act as liaison for the Agency.

Contact Information:

City of Sandy Public Works
39250 Pioneer Blvd.
Sandy, OR 97055

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the District. The District shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the District's Project Manager.

Intergovernmental Agreement
SE Sandy ADA Improvements Project – CD#53636

- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole and

Intergovernmental Agreement
SE Sandy ADA Improvements Project – CD#53636

absolute discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.

- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (F), (G), (H), (I), (J), (K), (R), and (S) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.
- S. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signatures on Following Page]

Intergovernmental Agreement
SE Sandy ADA Improvements Project – CD#53636

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

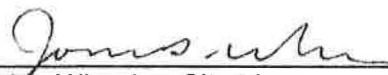
Clackamas County

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

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

Date

City of Sandy



Jordan Wheeler, City Manager

8/12/19

Date

County Counsel

Andrew Naylor
Approved to Form

August 7, 2019
Date

COPY

October 3, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Revenue Grant Agreement with the State of Oregon, Early Learning Division for the
Kindergarten Readiness Partnership & Innovation Program

Purpose/Outcome	Kindergarten Readiness Partnership & Innovation Program (KPI) promotes community and school partnerships that improve children's readiness for kindergarten at a local level by strengthening connection and collaboration between early care and the education sector.
Dollar Amount and Fiscal Impact	\$530,683 (\$463,847 for the period of October 1, 2019 through June 30, 2021 & \$66,836 for the period of July 1, 2021 through September 30, 2021. No County General Funds are involved and no match is required.
Funding Source	State of Oregon through its Department of Education, Early Learning Division Grant No. 12327
Duration	Effective date October 1, 2019 and terminates on September 30, 2021
Previous Board Action/Review	n/a
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. Date of counsel review: September 4, 2019
Contact Person	Korene Mather 503-650-3339
Contract No.	CFCC 9469

BACKGROUND:


The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of a Grant Agreement with the State of Oregon, Early Learning Division to promote Kindergarten Readiness Partnerships at the local community and school level by investing in innovative and promising models that align for early learning/K-12 integration and improve children's readiness for kindergarten.

This Revenue Grant Agreement is effective upon signature by all parties for services starting on October 1, 2019 and terminating on September 30, 2021. The total amount for this Grant \$530,683.

RECOMMENDATION:

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

Respectfully submitted,

 H3S deputy director FOR

Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

STATE OF OREGON GRANT AGREEMENT

Grant No. 12327

This Grant Agreement (“Grant”) is between the State of Oregon acting by and through its Department of Education, Early Learning Division (“Agency”) and Clackamas County, on behalf of the Clackamas Early Learning Hub (“Grantee”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

Pursuant to ORS 336.101, 336.104 and 329.175, Agency is authorized to enter into a grant agreement and provide funding for the purposes described in this Grant.

SECTION 2: PURPOSE

This grant agreement provides expectations on priority and allowable activities, restrictions, deliverables, and milestones for work that will take place during the 2019-21 biennium under the Early Learning Kindergarten Readiness Partnership & Innovation Program.

Generally, the purpose of the Early Learning Kindergarten Readiness Partnership & Innovation Program is to:

1. Promote community and school partnerships that improve children’s readiness for kindergarten, in alignment with the goals, objectives, and strategies in *Raise Up Oregon* <https://oregonearlylearning.com/raise-up-oregon>.
2. Strengthen connections and collaboration between the early care and education sector and local kindergarten-grade 12 (K-12) systems and schools by investing in innovative and promising models for early learning/K-12 integration across the state that can be scaled and replicated; and
3. Build a body of evidence that Oregon can use to create stronger alignment between its early care and education and K-12 sectors.

SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Execution Date”), this Grant is effective and has a Grant funding start date as of October 1, 2019 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on September 30, 2021.

SECTION 4: GRANT MANAGERS

4.1 Agency’s Grant Manager is:

Brett Walker, P-3 Alignment Specialist
Early Learning Division
700 Summer Street NE, Suite 300
503-947- brett.walker@ode.state.or.us

4.2 Grantee's Grant Manager is:

Rod Cook, Director
Clackamas Early Learning Hub
150 Beaver Creek Road
Oregon City, OR 97045
503-650-5677 or 971-420-3528
rodcoo@co.clackamas.or.us

4.3 A Party may designate a new Grant Manager by written notice to the other Party.

SECTION 5: PROJECT ACTIVITIES

Grantee must perform the project activities set forth on Exhibit A (the "Project"), attached hereto and incorporated in this Grant by this reference, for the period beginning on the Effective Date and ending September 30, 2021 (the "Performance Period"), with Grant expiration date of September 30, 2021.

SECTION 6: GRANT FUNDS

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to \$463,847.00 for the period October 1, 2019 through June 30, 2021 and \$66,836.00 for the period July 1, 2021 through September 30, 2021 ("Grant Funds") for the Project. Agency will pay the Grant Funds from monies available through its General Fund appropriation ("Funding Source").

SECTION 7: DISBURSEMENT GENERALLY

7.1 Disbursement.

7.1.1 Subject to the availability of sufficient moneys in and from the Funding Source, Agency will disburse Grant Funds to Grantee for the allowable Project activities described in Exhibit A that are undertaken during the Performance Period.

7.1.2 Grantee must provide to Agency any information or detail regarding the expenditure of Grant Funds required under Exhibit A prior to disbursement or as Agency may request.

7.1.3 Agency will only disburse Grant Funds to Grantee for activities completed or materials produced, that, if required by Exhibit A, are approved by Agency. If Agency determines any completed Project activities or materials produced are not acceptable and any deficiencies are the responsibility of Grantee, Agency will prepare a detailed written description of the deficiencies

within 15 days of receipt of the materials or performance of the activity, and will deliver such notice to Grantee. Grantee must correct any deficiencies at no additional cost to Agency within 15 days. Grantee may resubmit a request for disbursement that includes evidence satisfactory to Agency demonstrating deficiencies were corrected.

7.2 Conditions Precedent to Disbursement. Agency’s obligation to disburse Grant Funds to Grantee under this Grant is subject to satisfaction of each of the following conditions precedent:

7.2.1 Agency has received sufficient funding, appropriations, expenditure limitation, allotments or other necessary expenditure authorizations to allow Agency, in the exercise of its reasonable administrative discretion, to make the disbursement from the Funding Source;

7.2.2 No default as described in Section 15 has occurred; and

7.2.3 Grantee’s representations and warranties set forth in Section 8 are true and correct on the date of disbursement(s) with the same effect as though made on the date of disbursement.

7.3 No Duplicate Payment. Grantee may use other funds in addition to the Grant Funds to complete the Project; provided, however, the Grantee may not credit or pay any Grant Funds for Project costs that are paid for with other funds and would result in duplicate funding.

SECTION 8: REPRESENTATIONS AND WARRANTIES

8.1 Organization/Authority. Grantee represents and warrants to Agency that:

8.1.1 Grantee is a unit of local government duly organized and validly existing;

8.1.2 Grantee has all necessary rights, powers and authority under any organizational documents and under Oregon Law to (a) execute this Grant, (b) incur and perform its obligations under this Grant, and (c) receive financing, including the Grant Funds, for the Project;

8.1.3 This Grant has been duly executed by Grantee and when executed by Agency, constitutes a legal, valid and binding obligation of Grantee enforceable in accordance with its terms;

8.1.4 If applicable and necessary, the execution and delivery of this Grant by Grantee has been authorized by an ordinance, order or resolution of its governing body, or voter approval, that was adopted in accordance with applicable law and requirements for filing public notices and holding public meetings; and

8.1.5 There is no proceeding pending or threatened against Grantee before any court or governmental authority that if adversely determined would materially adversely affect the Project or the ability of Grantee to carry out the Project.

8.2 False Claims Act. Grantee acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) made by (or caused by) Grantee that pertains to this Grant or to the Project. Grantee certifies that no claim described in the previous sentence is or will be a

“false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Grantee further acknowledges in addition to the remedies under Section 16, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims

Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the Grantee.

8.3 No limitation. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided by Grantee.

SECTION 9: OWNERSHIP

9.1 Intellectual Property Definitions. As used in this Section and elsewhere in this Grant, the following terms have the meanings set forth below:

“Grantee Intellectual Property” means any intellectual property owned by Grantee and developed independently from the Project.

“Third Party Intellectual Property” means any intellectual property owned by parties other than Grantee or Agency.

“Work Product” means every invention, discovery, work of authorship, trade secret or other tangible or intangible item Grantee is required to create or deliver as part of the Project, and all intellectual property rights therein.

9.2 Grantee Ownership. Grantee must deliver copies of all Work Product as directed in Exhibit A. Grantee retains ownership of all Work Product, and grants Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, to reproduce, to prepare derivative works based upon, to distribute, to perform and to display the Work Product, to authorize others to do the same on Agency’s behalf, and to sublicense the Work Product to other entities without restriction.

9.3 Third Party Ownership. If the Work Product created by Grantee under this Grant is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Grantee must secure an irrevocable, non-exclusive, perpetual, royalty-free license allowing Agency and other entities the same rights listed above for the pre-existing element of the Third party Intellectual Property employed in the Work Product. If state or federal law requires that Agency or Grantee grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires Agency or the United States to own the intellectual property in the Work Product, then Grantee must execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

SECTION 10: CONFIDENTIAL INFORMATION

10.1 Confidential Information Definition. Grantee acknowledges it and its employees or agents may, in the course of performing its responsibilities, be exposed to or acquire information that is: (i)

confidential to Agency or Project participants or (ii) the disclosure of which is restricted under federal or state law, including without limitation: (a) personal identifiable information, as that term is used in ORS 646A.602(11), (b) social security numbers, and (c) information protected by the federal Family Educational Rights and Privacy Act under 20 USC § 1232g (items (i) and (ii) separately and collectively “Confidential Information”).

10.2 Nondisclosure. Grantee agrees to hold Confidential Information as required by any applicable law and in all cases in strict confidence, using at least the same degree of care Grantee uses in maintaining

the confidentiality of its own confidential information. Grantee may not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information except as is allowed by law and for the Project activities and Grantee must advise each of its employees and agents of these restrictions. Grantee must assist Agency in identifying and preventing any unauthorized use or disclosure of Confidential Information. Grantee must advise Agency immediately if Grantee learns or has reason to believe any Confidential Information has been, or may be, used or disclosed in violation of the restrictions in this Section. Grantee must, at its expense, cooperate with Agency in seeking injunctive or other equitable relief, in the name of Agency or Grantee, to stop or prevent any use or disclosure of Confidential Information. At Agency’s request, Grantee must return or destroy any Confidential Information, If Agency requests Grantee to destroy any confidential information, Grantee must provide Agency with written assurance indicating how, when and what information was destroyed.

10.3 Identity Protection Law. Grantee must have and maintain a formal written information security program that provides safeguards to protect Confidential Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628. If Grantee or its agents discover or are notified of a potential or actual “Breach of Security”, as defined by ORS 646A.602(1)(a), or a failure to comply with the requirements of ORS 646A.600 – 628, (collectively, “Breach”) with respect to Confidential Information, Grantee must promptly but in any event within one calendar day (i) notify the Agency Grant Manager of such Breach and (ii) if the applicable Confidential Information was in the possession of Grantee or its agents at the time of such Breach, Grantee must (a) investigate and remedy the technical causes and technical effects of the Breach and (b) provide Agency with a written root cause analysis of the Breach and the specific steps Grantee will take to prevent the recurrence of the Breach or to ensure the potential Breach will not recur. For the avoidance of doubt, if Agency determines notice required of any such Breach to any individual(s) or entity(ies), Agency will have sole control over the timing, content, and method of such notice, subject to Grantee’s obligations under applicable law.

10.4 Subgrants/Contracts. Grantee must require any subgrantees, contractors or subcontractors under this Grant who are exposed to or acquire Confidential Information to treat and maintain such information in the same manner as is required of Grantee under subsections 10.1 and 10.2 of this Section.

10.5 Background Check. If requested by Agency and permitted by law, Grantee’s employees, agents, contractors, subcontractors, and volunteers that perform Project activities must agree to submit to a criminal background check prior to performance of any Project activities or receipt of Confidential Information. Background checks will be performed at Grantee’s expense. Based on the results of the a background check, Grantee or Agency may refuse or limit (i) the participation of any Grantee

employee, agent, contractor, subgrantee, or volunteers, in Project activities or (ii) access to Agency Personal Information or Grantee premises.

SECTION 11: INDEMNITY/LIABILITY

11.1 Indemnity. Grantee must defend, save, hold harmless, and indemnify the State of Oregon and Agency and their officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Grantee or its officers, employees, subgrantees, contractors, subcontractors, or agents under this Grant (each of the foregoing individually or collectively a "Claim" for purposes of this Section). If legal limitations apply to the indemnification

ability of Grantee, this indemnification must be for the maximum amount of funds available for expenditure, including any available contingency funds, insurance, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds.

11.2 Defense. Grantee may have control of the defense and settlement of any Claim subject to this Section. But neither Grantee nor any attorney engaged by Grantee may defend the Claim in the name of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon. Nor may Grantee settle any Claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event the State of Oregon determines Grantee is prohibited from defending the State of Oregon, or is not adequately defending the State of Oregon's interests, or an important governmental principle is at issue and the State of Oregon desires to assume its own defense. Grantee may not use any Grant Funds to reimburse itself for the defense of or settlement of any Claim.

11.3 Limitation. Except as provided in this Section, neither Party will be liable for incidental, consequential, or other direct damages arising out of or related to this Grant, regardless of whether the damages or other liability is based in contract, tort (including negligence), strict liability, product liability or otherwise. Neither party will be liable for any damages of any sort arising solely from the termination of this Grant in accordance with its terms.

SECTION 12: INSURANCE

12.1 Workers' Compensation. If Grantee employs subject workers, as defined in ORS 656.027, Grantee must comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Grantee must require and ensure each of its subgrantees, contractors and subcontractors complies with these requirements. If Grantee is a subject employer, as defined in ORS 656.023, Grantee must also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If Grantee is an employer subject to any other state's workers' compensation law, Grantee must provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than

\$500,000 and must require and ensure each of its out-of-state subgrantees, contractors and subcontractors complies with these requirements.

12.2 Private Insurance. If Grantee is a private entity, or if any contractors, subcontractors, or subgrantees used to carry out the Project are private entities, Grantee and any private contractors, subcontractors or subgrantees must obtain and maintain insurance covering Agency in the types and amounts indicated in Exhibit B.

12.3 Public Body Insurance. If Grantee is a “public body” as defined in ORS 30.260, Grantee agrees to insure any obligations that may arise for Grantee under this Grant, including any indemnity obligations, through (i) the purchase of insurance as indicated in Exhibit B or (ii) the use of selfinsurance or assessments paid under ORS 30.282 that is substantially similar to the types and amounts of insurance coverage indicated on Exhibit B, or (iii) a combination of any or all of the foregoing.

SECTION 13: GOVERNING LAW, JURISDICTION

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

SECTION 14: ALTERNATIVE DISPUTE RESOLUTION

The Parties should attempt in good faith to resolve any dispute arising out of this Grant. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Grant. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each Party will bear its own costs incurred for any mediation or non-binding arbitration.

SECTION 15: DEFAULT

15.1 Grantee. Grantee will be in default under this Grant upon the occurrence of any of the following events:

15.1.1 Grantee fails to use the Grant Funds for the intended purpose described in Exhibit A or otherwise fails to perform, observe or discharge any of its covenants, agreements or obligations under this Grant;

15.1.2 Any representation, warranty or statement made by Grantee in this Grant or in any documents or reports relied upon by Agency to measure the Project, the expenditure of Grant Funds or the performance by Grantee is untrue in any material respect when made;

15.1.3 A petition, proceeding or case is filed by or against Grantee under any federal or state bankruptcy, insolvency, receivership or other law relating to reorganization, liquidation, dissolution, windingup or adjustment of debts; in the case of a petition filed against Grantee, Grantee acquiesces to such petition or such petition is not dismissed within 20 calendar days after such filing, or such dismissal is not final or is subject to appeal; or Grantee becomes insolvent or admits its inability to pay its debts as they become due, or Grantee makes an assignment for the benefit of its creditors.

15.2 Agency. Agency will be in default under this Grant if, after 15 days written notice specifying the nature of the default, Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Grant; provided, however, Agency will not be in default if Agency fails to disburse Grant funds because there is insufficient expenditure authority for, or moneys available from, the Funding Source.

SECTION 16: REMEDIES

16.1 Agency Remedies. In the event Grantee is in default under Section 15.1, Agency may, at its option, pursue any or all of the remedies available to it under this Grant and at law or in equity, including, but not limited to: (a) termination of this Grant under Section 18.2, (b) reducing or withholding payment for Project activities or materials that are deficient or Grantee has failed to complete by any scheduled deadlines, (c) requiring Grantee to complete, at Grantee's expense, additional activities necessary to satisfy its obligations or meet performance standards under this Grant, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, (e) exercise of its right of recovery of overpayments under Section 17 of this Grant or setoff, or both, or (f) declaring Grantee ineligible for the receipt of future awards from Agency. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

16.2 Grantee Remedies. In the event Agency is in default under Section 15.2 and whether or not Grantee elects to terminate this Grant, Grantee's sole monetary remedy will be, within any limits set forth in this Grant, reimbursement of Project activities completed and accepted by Agency and authorized expenses incurred, less any claims Agency has against Grantee. In no event will Agency be liable to Grantee for any expenses related to termination of this Grant or for anticipated profits.

SECTION 17: WITHHOLDING FUNDS, RECOVERY

Agency may withhold from disbursements of Grant Funds due to Grantee, or Grantee must return to Agency within 30 days of Agency's written demand:

17.1 Any Grant Funds paid to Grantee under this Grant, or payments made under any other agreement between Agency and Grantee, that exceed the amount to which Grantee is entitled;

- 17.2 Any Grant Funds received by Grantee that remain unexpended or contractually committed for payment of the Project at the end of the Performance Period;
- 17.3 Any Grant Funds determined by Agency to be spent for purposes other than allowable Project activities; or
- 17.4 Any Grant Funds requested by Grantee as payment for deficient activities or materials.

SECTION 18: TERMINATION

- 18.1 **Mutual.** This Grant may be terminated at any time by mutual written consent of the Parties.
- 18.2 **By Agency.** Agency may terminate this Grant as follows:
 - 18.2.1 At Agency’s discretion, upon 30 days advance written notice to Grantee;
 - 18.2.2 Immediately upon written notice to Grantee, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency’s reasonable administrative discretion, to perform its obligations under this Grant;
 - 18.2.3 Immediately upon written notice to Grantee, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency’s performance under this Grant is prohibited or Agency is prohibited from funding the Grant from the Funding Source; or
 - 18.2.4 Immediately upon written notice to Grantee, if Grantee is in default under this Grant and such default remains uncured 15 days after written notice thereof to Grantee.
- 18.3 **By Grantee.** Grantee may terminate this Grant as follows:
 - 18.3.1 If Grantee is a governmental entity, immediately upon written notice to Agency, if Grantee fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to perform its obligations under this Grant.
 - 18.3.2 If Grantee is a governmental entity, immediately upon written notice to Agency, if applicable laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project activities contemplated under this Grant are prohibited by law or Grantee is prohibited from paying for the Project from the Grant Funds or other planned Project funding; or
 - 18.3.3 Immediately upon written notice to Agency, if Agency is in default under this Grant and such default remains uncured 15 days after written notice thereof to Agency.
- 18.4 **Cease Activities.** Upon receiving a notice of termination of this Grant, Grantee must immediately cease all activities under this Grant, unless Agency expressly directs otherwise in such notice. Upon termination, Grantee must deliver to Agency all materials or other property that are or would be

required to be provided to Agency under this Grant or that are needed to complete the Project activities that would have been performed by Grantee.

SECTION 19: MISCELLANEOUS

- 19.1 Conflict of Interest.** Grantee by signature to this Grant declares and certifies the award of this Grant and the Projects activities to be funded by this Grant, create no potential or actual conflict of interest, as defined by ORS Chapter 244, for a director, officer or employee of Grantee.
- 19.2 Nonappropriation.** Agency's obligation to pay any amounts and otherwise perform its duties under this Grant is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Grant. Nothing in this Grant may be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.
- 19.3 Amendments.** The terms of this Grant may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.
- 19.4 Notice.** Except as otherwise expressly provided in this Grant, any notices to be given under this Grant must be given in writing by email, personal delivery, or postage prepaid mail, to a Party's Grant Manager at the physical address or email address set forth in this Grant, or to such other addresses as either Party may indicate pursuant to this Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- 19.5 Survival.** All rights and obligations of the Parties under this Grant will cease upon termination of this Grant, other than the rights and obligations arising under Sections 11, 13, 14, 16, 17 and subsection 19.5 hereof and those rights and obligations that by their express terms survive termination of this Grant; provided, however, termination of this Grant will not prejudice any rights or obligations accrued to the Parties under this Grant prior to termination.
- 19.6 Severability.** The Parties agree if any term or provision of this Grant is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Grant did not contain the particular term or provision held to be invalid.
- 19.7 Counterparts.** This Grant may be executed in several counterparts, all of which when taken together constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Grant so executed constitutes an original.
- 19.8 Compliance with Law.** In connection with their activities under this Grant, the Parties must comply with all applicable federal, state and local laws.

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

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

19.11 Contracts and Subgrants. Grantee may not, without Agency's prior written consent, enter into any contracts or subgrants for any of the Project activities required of Grantee under this Grant. Agency's consent to any contract or subgrant will not relieve Grantee of any of its duties or obligations under this Grant.

19.12 Time of the Essence. Time is of the essence in Grantee's performance of the Project activities under this Grant.

19.13 Records Maintenance and Access. Grantee must maintain all financial records relating to this Grant in accordance with generally accepted accounting principles. In addition, Grantee must maintain any other records, whether in paper, electronic or other form, pertinent to this Grant in such a manner as to clearly document Grantee's performance. All financial records and other records, whether in paper, electronic or other form, that are pertinent to this Grant, are collectively referred to as "Records." Grantee acknowledges and agrees Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Grantee must retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Grant, or until the conclusion of any audit, controversy or litigation arising out of or related to this Grant, whichever date is later.

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

19.15 Grant Documents. This Grant consists of the following documents, which are incorporated by this reference and listed in descending order of precedence:

- This Grant less all exhibits
- Exhibit A (the "Project")
- Exhibit B (Insurance)

19.16 Merger, Waiver. This Grant and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or

representations, oral or written, not specified herein regarding this Grant. No waiver or consent under this Grant binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given.

SECTION 20: SIGNATURES

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS GRANT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

STATE OF OREGON acting by and through its Department of Education

By: _____ Date _____
Julia Alpernas, Contract & Procurement Specialist

CLACKAMAS COUNTY acting on behalf of its Clackamas Early Learning Hub

By: _____ Date _____
Authorized Signature

Printed Name, Title

Federal Tax ID Number

Approved for Legal Sufficiency in accordance with ORS 291.047

By: Cynthia Byrnes, Senior Asst. Attorney General Date August 20, 2019
Name, Title

October 3, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Agreement #9335 to a Revenue Agreement
with Moda Health Plan, Inc.,
for Provider Services to members enrolled with Health Benefits Plan

Purpose/Outcomes	Provides Clackamas Health Centers (CHC) reimbursement for Provider Services serving Moda Health Benefits Plan members treated at CHC clinics.
Dollar Amount and Fiscal Impact	CHC is eligible to receive payment for services furnished to persons enrolled in Moda Health Benefits Plans. This is a no maximum agreement. No County General Funds are involved. No matching funds required.
Funding Source	Moda Health Plan, Inc.
Duration	Effective upon execution and no expiration.
Previous Board Action	The Board last reviewed and approved this contract on June 25, 2015, agenda item A2.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. It was approved on June 13, 2019.
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	9335

BACKGROUND:

Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Agreement #9335 to a Revenue agreement with Moda Health Plan, Inc., for the purpose of providing Provider Services.

Moda Health and CHC desire to enter into this Participating Provider Agreement under which CHC will provide medical services A 'Participating Provider' means health care professionals who provide: family physician, nurse practitioners, women's health care, and behavioral health care.

This is a revenue contract for CHC. The total amount of the agreement is unknown because the number of authorized patients cannot be projected with certainty. No County General Funds are involved. The Agreement is effective upon signature and will continue until terminated.

RECOMMENDATION:

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

Respectfully submitted,

Richard A. Cook, H3S deputy director for

Richard Swift, Director
Health, Housing, and Human Services

Healthy Families. Strong Communities.

2051 Kaen Road, Oregon City, OR 97045 • Phone: (503) 742-5300 • Fax: (503) 742-5352

www.clackamas.us/community_health

**FOR MODA HEALTH USE ONLY
CONTRACT EFFECTIVE DATE:**

**MODA HEALTH PLAN, INC.
PARTICIPATING PROVIDER AGREEMENT
FOR COMMERCIAL BENEFIT PLANS**

#9335

This Participating Provider Agreement (“Agreement”) is entered into between Moda Health Plan, Inc. (hereinafter called “Moda Health”) and **CLACKAMAS HEALTH CENTERS** (hereinafter called “Provider”). This Agreement shall be effective as of the date countersigned by Moda Health (“Effective Date”). Notwithstanding the Effective Date, Provider shall not provide services to Members under this Agreement unless and until all licensure verification and credentialing processes (if applicable) have been completed and approved by Moda Health.

RECITALS

A. Moda Health is an Oregon corporation engaged in the business of providing health insurance and administering or providing Health Benefit Plans.

B. Moda Health and Provider desire to enter into this Participating Provider Agreement under which Provider will provide medical services within the scope of its licensure or accreditation with respect to the Health Benefit Plans offered by Moda Health.

C. Moda Health and Provider recognize that while the Health Benefit Plans under which a Member may seek medical services may or may not cover and/or pay for the medical services requested, the final decision to provide or receive medical services is to be made by the Member and Provider. Provider will consider the Member’s input into the proposed treatment plan, including the opportunity for the Member to refuse treatment and express preferences for future treatment and decisions.

NOW, THEREFORE, the parties agree as follows:

I. DEFINITIONS

- 1.1 **“Administrative Services Only”** or **“ASO”** means an arrangement whereby an employer or other entity has retained Moda Health to perform certain administrative tasks, such as claims handling and claims payment, for its employees. In an ASO arrangement, the employer acts in a self-insured role which means that they are financially responsible for any claim payments on behalf of their employees and Moda Health fulfills the role of a third party administrator.
- 1.2 **“Billed Charge”** is the fee for health care services typically charged by Provider for a particular service. The Billed Charge shall be the same regardless of whether or not an individual has insurance.
- 1.3 **“Clean Claim”** means a claim that has no defect, impropriety, lack of any required substantiating documentation or particular circumstance requiring special treatment that prevents timely payment in accordance with this Agreement.
- 1.4 **“Coinsurance”** means a cost-sharing obligation that requires the Member to pay a percentage of the cost of specified Covered Services.

- 1.5 **“Continuity of Care”** means the feature of a health benefit plan under which a Member who is receiving care from an individual provider is entitled to continue with the individual provider for a limited period of time after the medical services contract terminates.
- 1.6 **“Co-payment”** means the amount that a Member is responsible to pay under a Health Benefit Plan at the time of service.
- 1.7 **“Covered Services”** means those medically necessary health care services covered under a Health Benefits Plan, as determined under the terms and conditions of the applicable Health Benefits Plan.
- 1.8 **“Deductible”** means the amount a Member must pay for Covered Services each calendar or contract year before a payer commences payment for Covered Services as defined under the applicable Health Benefit Plan.
- 1.9 **“Emergency Medical Condition”** means a medical condition that manifests itself by acute symptoms of sufficient severity, including severe pain, that a prudent layperson possessing an average knowledge of health and medicine would reasonably expect that failure to receive immediate medical attention would place the health of a person, or a fetus in the case of a pregnant woman, in serious jeopardy.
- 1.10 **“Fully Insured Plan”** means an employer group health plan under which the employer pays a monthly premium to Moda Health for health coverage for the employer’s employee and dependents of such employees and under which Moda Health administers the plan and assumes the risk. Fully Insured Plan also includes an individual plan for which the individual pays a premium to Moda Health for health coverage for the individual and/or the individual’s dependents under which Moda Health administers the plan and assumes the risk.
- 1.11 **“Health Benefits Plan”** means a group health benefits plan, including individual or group health insurance policies, offering the services of approved health care providers participating in the Moda Health Benefit Plans, funded, underwritten or administered by Moda Health and which describe the Covered Services, applicable co-payments, co-insurance, and deductibles (if any), and other information pertinent to the provision of services.
- 1.12 **“Hospital”** means a fully licensed medical hospital.
- 1.13 **“Medical Case Management”** means the evaluation of a medical condition, developing and implementing a plan of care, coordinating medical resources, communicating health care needs to the Member and the Member’s health care provider, and monitoring the Member’s progress to facilitate quality care.
- 1.14 **“Medically Necessary”** means a service or supply that is required for the diagnosis or treatment of an illness or injury and which, in the opinion of Moda Health, is (i) appropriate to the treatment setting and level of care in terms of the amount, duration and frequency and consistent with the symptoms, diagnosis and treatment of the Member’s condition; (ii) received in the least costly medically appropriate treatment setting; (iii) appropriate with regard to the accepted standards of medical practice as determined by Moda Health; (iv) and not primarily for the convenience of the Member, the Provider, or the Member’s treating health care provider.
- 1.15 **“Mental Health”** refers to benefits, facilities, programs, levels of care and services related to the assessment and treatment of mental illness. For purposes of this Agreement “mental health” and “medical” are used interchangeably.

- 1.16 **"Mental Illness"** means any mental disorder covered by diagnostic categories listed in the Diagnostic and Statistical Manual of Mental Disorders, DSM-IV-TR, Fourth Edition (DSM-IV) or the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).
- 1.17 **"Member"** means an individual who has enrolled in a Health Benefits Plan offered or administered by Moda Health.
- 1.18 **"Never Events"** means errors in medical care that are clearly identifiable, preventable, and serious in their consequences for patients, and that indicate a real problem in the safety and credibility of a health care provider. Examples of such include surgery on the wrong body part; foreign body left in a patient after surgery; mismatched blood transfusion; major medication error; severe "pressure ulcer" acquired at Provider's facility; and preventable post-operative deaths.
- 1.19 **"Participating Provider Manual"** means the manual available on the Moda Health website which contains information and instructions for facilities and physicians, and which is prepared and provided by Moda Health, as revised by Moda Health from time-to-time.
- 1.20 **"Participating Provider"** means any individual health care professional, clinic or facility who: (i) is fully licensed or certified within their scope of practice to provide medical services to Members including but not limited to individuals who practice medicine or osteopathy who may be a sole practitioner or is an owner, member, shareholder, partner, or employee of a partnership or professional corporation; and (ii) has entered into an agreement with Moda Health to render health care services to Members.
- 1.21 **"Payer"** means an insurance company, employer health plan, Taft-Hartley Fund, or other self-funded entities for which Moda Health administers a plan or contract that is responsible to pay or arrange to pay for the provision of health care services to Members.
- 1.22 **"Primary Care Provider" or "PCP"** means a health care professional who is a family physician, pediatrician, nurse practitioner or internist, and whose billings for primary care services are at least fifty percent (50%) of the physician's total billings. With respect to women patients, "Primary Care Provider" may include a women's health care provider, defined as an obstetrician, gynecologist or physician assistant specializing in women's health, advanced registered nurse practitioner specialist in women's health or certified nurse midwife, practicing within the applicable lawful scope of practice under applicable state law.
- 1.23 **"Prior Authorization" or "Service Authorization"** means a determination by Moda Health, prior to the provision of services, that the Member is eligible for coverage and/or determinations by Moda Health relating to benefit coverage and medical necessity.

II. GENERAL REQUIREMENTS OF MODA HEALTH

- 2.1 **Enrollment of Members.** Moda Health shall use best efforts to contract with individuals or employers to provide Health Benefit Plans and to enroll Members in the Health Benefit Plans.
- 2.2 **Changes to Member Contracts.** Moda Health may change, revise, modify or alter the form and/or content of Health Benefit Plans without prior approval of or notice to Provider.
- 2.3 **Member Identification and Eligibility.** Each Member shall be provided with an identification card which is to be presented by Member upon visits to Provider.

- 2.4 Publication. Moda Health will promote use of Participating Providers by including their names and telephone numbers in its Participating Provider directory, and by so designing its Health Benefit Plans as to offer financial incentives to Members to use Participating Providers' services and facilities. Any incorrect or incomplete information involving Provider published by Moda Health shall be corrected and disseminated by Moda Health in a timely manner.
- 2.5 Agreements with Payers. During the term of this Agreement, Moda Health will make reasonable efforts to maintain its existing agreements with its ASO groups and other Payers. Moda Health shall also evaluate the ability of ASO groups and Payers to meet claims payments obligations and to terminate or bring into compliance an ASO group or Payer that has defaulted.

III. GENERAL REQUIREMENTS OF PROVIDER

- 3.1 Licenses and Certifications. Provider shall possess and will maintain in good standing, all licenses, registrations, certifications, and accreditations required by law to render health care in the State in which Provider is located, and will comply with any applicable local, state and/or federal laws or regulations related to the delivery of health care services.
- 3.2 Notice of Adverse Action. Provider shall promptly notify Moda Health in writing, but within not more than thirty (30) days, of any formal action against any licenses or, if applicable, against any certifications by any certifying boards or organizations, as well as any changes in Provider's practice ownership, Tax ID number, or business address, along with any other problem or situation that may or will impair the ability of Provider to carry out the duties and obligations of this Agreement. Provider staff shall not have confessed to, been convicted or found guilty of any offense or act that is a violation of any applicable regulations or statutes governing professional conduct of health care professionals. A conviction shall include a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.
- 3.3 Review Committees. Provider shall participate in, accept and abide by the results of, and comply with the requirements and result of the Credentialing, Peer Review, Utilization Review and Quality Assurance Programs as set forth in the Participating Provider Manual, which is incorporated herein by this reference. These shall include but are not limited to, medical records review, investigation of complaints, outcomes studies and data collection from monitoring and evaluation of health care service and delivery for Members. Provider shall share outcomes studies and data with Moda Health to the same extent it shares such information with any other health plan or Payer.
- 3.4 Provider Competency. Any individual employed by Provider and providing health care services hereunder shall be competent and have the training necessary to perform the services as set forth in this Agreement.
- 3.5 Compliance with Laws. Provider will cooperate with Moda Health so that Moda Health may meet any requirements imposed on Moda Health, or imposed on the Health Benefit Plans subject to this Agreement, by state and federal law, as amended, and all regulations issued pursuant thereto. To the extent that the terms of this Agreement conflict with applicable state and federal law, this Agreement will be deemed amended to comply with the applicable state and federal law and all regulations issued pursuant thereto. To the extent that any services are provided to patients related to any health plan related to the Affordable Care Act, Provider agrees that it will comply with all applicable laws and regulations relating to the standards specified in CFR § 156.340(a).
- 3.6 Reporting Obligations. Moda Health and Provider recognize that federal and state law may impose certain reporting requirements on Moda Health. By way of example, but not limitation, such reporting requirements may involve reports concerning utilization review and quality assurance or quality assessment, including preventative health care. Provider agrees to cooperate with Moda

Health to provide data within Provider's control in order to assist Moda Health to respond to such reporting requirements imposed upon Moda Health.

- 3.7 Provider Manual. Provider shall comply with the Participating Provider Manual, as may be modified by Moda Health from time to time. Moda Health shall provide Provider sixty (60) days prior notice of any material changes.
- 3.8 Directory Listing and Provider Demographic Information. Provider shall permit Moda Health to use Provider's name, address, telephone number, applicable specialty designation, and other information concerning Provider in directories provided to Members and other participants in Health Benefit Plans. Any incorrect or incomplete information involving Provider published by Moda Health shall be corrected and disseminated by Moda Health in a timely manner. It is Provider's obligation to inform Moda Health, as soon as possible, but no later than two (2) business days of any change to Provider demographic information that affects Member's access or availability of care, including name, practice location address, phone number, Tax ID number, or ability to accept new patients.
- 3.9 Participating Providers. Provider shall ensure that all of its employed or contracted physicians are Participating Providers with Moda Health.
- 3.10 Cost Effectiveness. Provider agrees to practice in a cost-effective manner while ensuring quality patient care for Members and to the extent feasible, Provider agrees that it shall make best efforts to:
- (a) Avoid referring Members to an emergency department when other treatment would be equally medically appropriate and more cost-effective.
 - (b) Utilize outpatient services whenever medically feasible in lieu of in-patient services.
 - (c) Cooperate fully with the Moda Health pre-authorization program and particularly to obtain prior approval for all but emergency Hospital admissions.
 - (d) Participate in Moda Health's utilization review planning for appropriate discharge of hospitalized patients.
 - (e) If there is a medical emergency requiring emergency admission to a Hospital, to comply with the provisions of Section 4.6 of this Agreement.
- 3.11 Provider may collect any applicable Co-payments at the time of service. Provider shall not require advance payment of Deductible and Co-insurance amounts.

IV. PROVISION OF SERVICES

- 4.1 Availability of Services. Provider agrees to provide medical services to Members in accordance with this Agreement and shall make best efforts to render services in a manner that assures availability, adequacy and Continuity of Care to Members.
- 4.2 Services to Members. Services to Members shall be in accordance with appropriate professional standards of care. The quality and availability of Covered Services provided to Members shall be no less than the quality and availability provided to other patients. This Agreement shall not be construed so as to alter Provider's relationship with Provider's patients, or to interfere with Provider's ability to provide services acceptable under current medical standards.

The final decision to provide or receive services is to be made by the Member and Provider, regardless of whether Moda Health or its designated agent has determined such services are medically necessary or Covered Services. Provider will consider the Member's input into the proposed treatment plan including the opportunity for the Member to refuse treatment and express preferences for future treatment and decisions. Moda Health and Provider recognize that while the Health Benefit Plans under which a Member may seek medical services may or may not cover and/or pay for the medical services requested, the final decision to provide or receive medical services is to be made by the Member and Provider

- 4.3 Coverage During Absence. Provider agrees to maintain appropriate coverage arrangements among Participating health care professionals so that Covered Services remain available and accessible to Members, including access to Provider's emergency medical services on a 24-hour, 7-day-a-week basis. The parties acknowledge that with respect to certain Participating Providers, an after-hours telephone service may satisfy this coverage requirement, provided Members are directed to an on-call physician or area facility offering urgent and emergent care.
- 4.4 Referrals. Provider agrees, in the treatment and care of Members, to the extent feasible, to use only Participating Providers and facilities. Provider agrees to make best efforts to obtain prior approval of Moda Health pursuant to procedures set forth in the Participating Provider Manual before obtaining the services of a non-Participating Provider or agency, in the event Provider believes that such health care professional or agency possesses unique skills or services necessary to give adequate care to any Member; provided, however, that consistent with Section 4.2 of this Agreement, this limitation on referrals is not intended to cause the Physician to deny referral of a Member to a non-Participating Provider for the provision of such care, if the Member is informed that the Member will be responsible for the payment of such non-covered, experimental or referral care and the Member nonetheless desires to obtain such care or referral.
- 4.5 Prior Authorizations. Provider understands that prior authorization by Moda Health is necessary with respect to certain services to be provided by Provider to a Member and in such cases, Provider shall make best efforts to obtain prior authorization of Moda Health pursuant to procedures set forth in the Participating Provider Manual before authorizing or providing such services. If Provider fails to obtain a prior authorization where one is required, Moda Health may deny the services and Provider may not balance bill the Member.
- 4.6 Emergency Admission. In the event of a medical emergency admission in circumstances where prior authorization is not possible, not feasible, or might involve delays jeopardizing the Member's care, Provider shall proceed with its best medical judgment and shall make best efforts to notify Moda Health within two (2) business days of patient's admission.

In such event, Moda Health shall pay for all Covered Services (pursuant to coverage limitations and payment provisions in the applicable Health Benefits Plan) rendered up to the time of such notification and the Moda Health approval or disapproval of the continuation of any such service. In the event that the notice required by this section is not given as required, Moda Health reserves the right to suspend, refuse or terminate payment for Covered Services rendered between the time such notice should have been given to Moda Health and the time notice was actually given to Moda Health.

- 4.7 Withdrawal. Subject to Provider's professional responsibilities, Provider may withdraw from the care of a Member when, in the professional judgment of Provider, it is in the best interest of the Member to do so.

- 4.8 Advocacy. Provider may advocate a decision, policy or practice to Moda Health, on behalf of a Member that is a patient of Provider without being subject to termination or penalty for the sole reason of such advocacy.
- 4.9 Member Identification and Eligibility. Provider shall use best efforts to verify a Moda Health Member's eligibility for service before treatment commences or as soon thereafter as reasonably possible.
- 4.10 Laboratory Certification. Provider shall take all reasonable measures to ensure that all laboratory testing sites providing services under this Agreement 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 types of tests permitted under the terms of their waiver. Laboratories with certificates of registration may perform a full range of laboratory tests.
- 4.11 Moral or Religious Objections of Provider. The parties acknowledge that Provider shall not be obligated to provide health care services that are judged morally wrong by any religious teachings or authority under which Provider operates, except to the extent that such services are required by applicable State or Federal law.

V. RELATIONSHIP OF PARTIES

- 5.1 Provider - Moda Health. It is expressly understood that Provider renders services to Members as an independent medical service. Neither party acts as the agent, principal, joint venturer or partner of the other. It is the sole responsibility of Provider to care for Members and to determine with the Member what services are medically appropriate for any Member.
- 5.2 Liability for Obligations. Notwithstanding any other section or provision of this Agreement, nothing contained herein shall cause either party to be liable or responsible for any debt, liability, or obligation of the other party, any third party, or Payer unless such liability or responsibility is expressly assumed by the party sought to be charged therewith. With the exception of those items subject to Section 5.3 of this Agreement, each party shall be solely responsible for the payment of debts and obligations which may be sought by a third party that may be due as a result of that party's actions and exercise of its obligations hereunder.
- 5.3 Indemnification and Contribution.

These provisions relate to third party claims made by persons or entities, including Members, other than Provider and Moda Health.

- 5.3.1 Medical Treatment. In the event of alleged improper medical treatment of a Member by Provider, Provider agrees to indemnify and hold Moda Health harmless from and against any and all liabilities, costs, damages and expenses, including attorney's fees, to the extent resulting from or attributable to the negligence or intentionally wrongful acts of Provider or Provider's employees.
- 5.3.2 Mutual Indemnification. With respect to claims other than those described in Section 5.3.1, as between Provider and Moda Health and within the limits of their respective policies of professional and general liability insurance, and to the extent to not be otherwise inconsistent with the laws of the applicable jurisdiction, each party shall indemnify and hold harmless the other, its appointed board members, officers, and employees, , individually and collectively, from all fines, claims, demands, suits or actions of any kind

or nature to the extent caused by the indemnifying party's negligent acts or omissions or intentionally wrongful acts in the course of its performance of its obligations under this Agreement. Nothing in this Agreement or in its performance will be construed to result in any person being deemed the officer, servant, agent or employee of the other party when such person, absent this Agreement and its performance, would not in law have held such status.

VI. PAYMENT AND BILLING

6.1 **Billings.** Provider shall make best efforts to submit written claims and detailed billings to Moda Health within ninety (90) days of the date services were provided and, in any event, shall submit claims no later than twelve (12) months from the date that the Member received the services. Except for claims for which Moda Health is the secondary insurer, claims not submitted within twelve (12) months of the date of services shall be disallowed and Provider shall not bill the Member nor Moda Health for services or supplies associated with such claims. No claims may be submitted before the date of service. Provider shall not bill Moda Health for amounts in excess of Provider's Billed Charge for such services, nor shall Provider bill services provided to Members at a rate higher than Provider bills for services provided to individuals without health care coverage.

6.2 **Never Events.** Provider agrees that should a Never Event occur that Provider waives the right to bill and collect any reimbursement from either Moda Health or the Member for any and all services (medical or otherwise) that are related to the Never Event and for any medical services provided thereafter as a result of the Never Event occurring.

In the event that Moda Health has made any payment(s) for services that are defined after payment as Never Events, Provider agrees to promptly refund all monies paid related to the Never Event services, including any amounts paid to Provider by Member as co-payments, deductibles, and co-insurance. Provider will refund such monies promptly upon its own discovery of the occurrence of a Never Event or upon learning of a Never Event from Moda Health, the Member or any other third party.

6.3 **Moda Health as the Secondary Insurer.** Provider shall make best efforts to submit claims for which Moda Health is the secondary insurer within thirty (30) days of the primary carrier's payment or denial but in no case more than one (1) year from the date of the primary carrier's payment or denial. Should a Member fail to provide Provider with information regarding Member's coverage through Moda Health prior to expiration of the twelve (12) month claim limitation period, Member shall be responsible for payment.

6.4 **Claim Forms and Content.** Provider is expected to submit claims for services rendered using valid codes from HIPAA-approved code sets. Claims should be coded appropriately according to industry standard coding guidelines (including but not limited to UB Editor, AMA, CPT, CPT Assistant, HCPCS, DRG guidelines, CMS' National Correct Coding Initiative (CCI) Policy Manual, CCI table edits and other CMS guidelines). Claims will be submitted on the CMS UB 04 and/or CMS 1500 or other recognized forms (including any future editions), for health care services to Members. Such billings shall include a full itemization for charges, use of modifiers or extenders, if any, and summary information on diagnosis, scope of treatment and patient identity.

6.5 **Claim Payment.** For Covered Services provided to Members, Moda Health shall pay a Clean Claim or deny the claim not later than thirty (30) days after the date on which Moda Health receives the claim. If Moda Health requires additional information before payment of a claim, not later than thirty (30) days after the date on which Moda Health receives the claim, Moda Health shall notify the Member and Provider in writing of the delay and provide an explanation of the additional information needed to process the claim. Moda Health shall pay a Clean Claim or deny the claim

not later than thirty (30) days after the date on which Moda Health receives the additional information. Moda Health shall make payment to Provider within the timeframes required by applicable state and federal law. Such payment shall be based on maximum fees payable by Moda Health as described in Exhibit B. If Moda Health fails to pay a Clean Claim within the time frames specified herein, Provider shall be entitled to interest payments as provided in ORS 743.913.

6.6 Limitation of Member Liability. Provider shall not bill or collect payment from the Member, or seek to impose a lien, for the difference between the amount allowed under this Agreement and Provider's Billed Charges, or for any amount denied or otherwise not paid under this Agreement for any reason, including but not limited to the following:

- (a) Provider's failure to timely file claims;
- (b) Lack of medical necessity as determined by Payer or failure to obtain prior authorization;
- (c) Inaccurate or incorrect claim processing;
- (d) Insolvency or other failure by Payer to fund claim payments if Payer is an entity required by law to ensure that its Members not be billed in such circumstances.

Nothing in this provision is intended to prevent Provider and Member from contracting for the payment by a Member for services that are not Covered Services under the Member's applicable Health Benefits Plan. In addition, Member and Provider may enter into a payment agreement regarding the provision of Covered Services where the Member requests to obtain such services outside the scope of the Health Benefits Plan. In such instances, Moda Health shall not be billed for such Covered Services and Provider may collect payment for such services directly from the Member.

6.7 Overpayment/Underpayment/Erroneous Payment. As required under applicable state law, Moda Health shall have the right to make, and Provider shall have the right to request, corrective adjustments to a previously submitted claim. Any request for a corrective adjustment must specify the reason as to why the requesting entity believes it is entitled to an adjustment. Moda Health shall have no obligation to pay additional amounts and Provider shall have no obligation to refund any amounts unless the request for corrective adjustment is made within eighteen (18) months from the date the claim was originally paid or denied. In addition, for claims involving coordination of benefits, the request for corrective action must be made within thirty (30) months from the date that the claim was originally paid or denied, and any such request must specify the reason the party believes it is owed the refund or additional payment, and include the name and mailing address of the entity that has primary responsibility for payment of the claim or who has disclaimed responsibility for payment of the claim. Moda Health shall have the right to request a refund at any time on claims involving fraud or instances where a third party is found responsible for satisfaction of the claim as a consequence of liability imposed by law and where Moda Health is unable to recover directly from the third party because the third party has either already paid or will pay Provider for the health services covered by the claim.

If Provider fails to contest a refund request in writing to Moda Health within thirty (30) days of its receipt, the request is deemed accepted and the refund must be paid. If Provider contests the refund request, the dispute will be processed in accordance with the appeal procedure set forth in Section 8.1. If Moda Health does not receive payment or a request for appeal within thirty (30) days of Provider's receipt of the written request, then the amount owed may be deducted from the amounts due Provider on the next claim(s) processed for Provider until the debt is settled. Neither party may request that a contested corrective adjustment be made any sooner than six months after receipt of the request. This 30 day period may be waived upon mutual agreement of the parties. Nothing in this section prohibits Provider from choosing at any time to refund to Moda Health any payment previously made to satisfy a claim.

- 6.8 Coordination of Benefits. Coordination of Benefits ("COB") refers to the determination of which of two or more health benefit plans, including Medicare, or Medicaid, will pay, as either primary or secondary payer, for medical services provided to a Member. The determination of liability for payment of medical services, subject to COB, will be in accordance with applicable state and federal laws and regulations and applicable language in the Health Benefit Plans issued or administered by Moda Health. Provider agrees to cooperate with Moda Health in presenting claims for payment to other payers, or pursuing claims against other payers, for appropriate application of COB as set forth in this section. To the extent permitted by applicable state law, a secondary payer may adjust COB payments within two (2) years from the date of the initial estimated payment, should the primary carrier provide actual benefit information.
- 6.9 Services Not Medically Necessary and Services Considered Experimental/Investigational. If Moda Health determines that a service or supply rendered to a Member was not Medically Necessary or was experimental or investigational, Provider will not charge either Payer or Member for such service or supply unless Provider can demonstrate that the Member was notified prior to receiving such service or supply that Payer considered the service or supply experimental, investigational or not Medically Necessary, and that the Member had agreed in writing, in advance, to pay for such service or supply.
- 6.10 Audits of Provider by Moda Health. Moda Health or its designee may conduct audits of Provider's facility and Members' records at Provider's office during Provider's regular business hours. Moda Health shall provide Provider not less than thirty (30) calendar days advance notice of such audit, except when Moda Health, in its discretion, determines there is a significant quality of care issue or risk that Provider's documents may be altered, created or destroyed. In such case, Provider shall provide Moda Health access to facility or records upon twenty-four (24) hours' notice. For Member record audits, Moda Health's notice shall apprise Provider of the period of the audit. Provider agrees to have all Member records for that period available at the time of the audit. Such records shall include dates of service, name of Member, diagnosis, description of services provided, any supporting documentation, medical and billing records and identity of practitioner providing the services. Records not produced at the time of the audit will be deemed non-existent. Moda Health shall be responsible for the cost of copying any records photocopied during an on-site audit. Audits shall be conducted in a manner that, to the greatest extent possible, avoids disruption of Provider's business affairs and minimizes the burden on Provider. Audits will comply with all laws, statutes and regulations pertaining to the confidentiality of Member records. Failure by Provider to cooperate with the audit will be a breach of this Agreement. These rights shall survive termination of this Agreement.

Moda Health's remedies for Provider's failure to cooperate with the auditors, for overutilization or lack of documentation, or for Provider's inappropriate billing, whether fraudulent, undocumented, or for medically unnecessary services, shall include, but not be limited to: application of payment of current claims to reduce the amount that Moda Health determines Provider owes for past inappropriate billing; one-hundred percent (100%) review of Provider's current and future claims and their supporting documentation; recovery of payments made to Provider for past inappropriately billed claims; denial of future inappropriately billed claims and immediate termination of Provider's agreements with Moda Health. If Moda Health denies claims for inappropriate billing, Provider shall not bill the Member.

To the extent that any records relate to patients who are covered under a health plan related to the Affordable Care Act, Provider agrees that it will permit access to the Secretary of HHS and the United States Office of Inspector General or their designees in connection with their right to evaluate through audit, inspection, or other means, to Provider's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to Moda Health

Plan, Inc.'s obligations in accordance with Federal standards under CFR § 156.340(a) until 10 years from the final date of the agreement period.

- 6.11 Special Investigations Unit. The Moda Health Special Investigations Unit (SIU) may conduct audits of Provider during Provider's regular business hours. The SIU shall provide Provider ten (10) business days (or lesser notice if mutually agreed upon) advance notice of such audit. However, if Moda Health reasonably determines there is a significant quality of care issue or risk that Provider's documents may be altered, created or destroyed, Provider shall provide Moda Health access to facility or records upon twenty-four (24) hours' notice, except as shall not be allowed by applicable law. Except as otherwise restricted by applicable law, all medical records provided to Moda Health shall include dates of service, name of Member, diagnosis, description of services provided, any supporting documentation, medical and billing records and identity of practitioner providing the services.

Unless otherwise specified, Moda Health follows Centers for Medicare and Medicaid Services Guidelines and MCG Care Guidelines (formerly Milliman) (collectively, the "Guidelines") for the purposes of determining the appropriateness of the services and/or accuracy of the claim. Records not produced at the time of the audit will be deemed non-existent if not produced by Provider to Moda Health within thirty (30) days after the submission of the final audit report by Moda Health fully describing the audit findings. Provider shall be responsible for the cost of copying any records photocopied during an on-site audit. Audits shall be conducted in a manner that, to the greatest extent possible, avoids disruption of Provider's business affairs and minimizes the burden on Provider. Audits (including access to Provider's records) will be limited to and comply with all laws, statutes and regulations pertaining to the confidentiality of Member records. Failure by Provider to cooperate with the audit will be a breach of this Agreement. Moda Health's rights to audit shall survive termination of this Agreement.

Provider may appeal audit findings in accordance with the SIU appeal rights set forth in the Participating Provider Manual.

- 6.12 Audits of Moda Health by Provider. Provider shall have the right to audit Moda Health's records related to adjudication of Provider's claims. The audit may be performed either by Provider or by an independent auditor selected by Provider. Such audits shall be conducted during Moda Health's regular business hours at Moda Health's office and shall be limited to records necessary to perform the audit. Provider shall give Moda Health no less than thirty (30) calendar days advance notice of such claims audit and shall inform Moda Health of the claim records to be audited. Moda Health shall have the records for that time period available for the auditors at the time of the audit. Such audits shall be conducted in a manner that, to the greatest extent possible, avoids disruption of Moda Health's business affairs and minimizes the burden on Moda Health. Audits will comply with all laws, statutes and regulations pertaining to the confidentiality of Member records. Failure by Moda Health to cooperate with the audit will be a breach of this Agreement. These rights shall survive termination of this Agreement.

VII. TERM AND TERMINATION

- 7.1 Effective Date; Term. This Agreement will become effective on the Effective Date and will continue in effect for a period of twelve (12) months. Unless otherwise terminated as provided in this Agreement, on each anniversary of the Effective Date this Agreement will automatically extend and continue in effect for successive renewal terms of twelve (12) months each on the same terms and conditions then in effect.
- 7.2 Discretionary Termination. Either party may terminate this Agreement at any time by giving at least one hundred twenty (120) calendar days' prior written notice to the other party specifying that

termination is being made under the provisions of this clause and specifying the effective date of termination.

- 7.3 Termination for Cause. Either party may terminate this Agreement at any time for cause by providing thirty (30) calendar days' written notice to the other party. Cause shall mean any material violation or breach of this Agreement. The notice must specify the basis for the termination and provide the other party thirty (30) calendar days to cure the breach to avoid termination under this section.
- 7.4 Immediate Termination. This Agreement shall terminate immediately upon written notice upon: (i) the institution by or against either party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of either party's debts; (ii) either party making an assignment for the benefit of creditors; (iii) either party's dissolution or ceasing to operate in the ordinary course of business; or (iv) Provider's failure to maintain credentialing or re-credentialing per Moda's processes and standards.
- 7.5 Information to Members. The parties agree to cooperate with each other in good faith and without disparagement in connection with information supplied by either party to Members in connection with any termination or non-renewal of this Agreement. If Members seek services from Provider after the date of termination, Provider shall inform such Members that Provider no longer has an agreement with Moda to render Covered Services and shall direct them to Moda's customer service department. Provider shall not otherwise initiate communications with Members, verbally, or in writing concerning the termination, unless the parties have agreed in writing to the content of such communications in the context of a mutually agreed communication plan. Nothing in this provision is intended, nor shall it be construed, to prohibit or restrict Provider from disclosing to any Member information regarding treatments available, the risk, benefits and alternatives thereto. The terms of this Section 7.5 shall survive termination of this Agreement.
- 7.6 Effect of Termination. If this Agreement is terminated for any reason other than for quality of care concerns or Provider's failure to maintain licenses or certifications as described herein, the terms of this Agreement shall continue to be in effect as follows:
- (a) Until the day following the date on which an active course of treatment entitling the Member to Continuity of Care is completed or the 120th day after date of notification by Moda Health to the Member of the termination of the contractual relationship with Provider, whichever is first; or
 - (b) For those Members undergoing care by Provider for pregnancy and who become entitled to Continuity of Care after commencement of the second trimester of the pregnancy, such Members shall receive the care until the later of the following dates:
 - (i) The 45th day after the birth; or
 - (ii) As long as the Member continues under an active course of treatment, but not later than the 120th day after the date of notification by Moda Health to the Member of the termination of the contractual relationship with Provider.

During this continuation period, Provider shall be paid at the rates and terms in effect as of the date of termination. Moda Health will make a good faith effort to direct Members to other participating providers.

- 7.7 Survival of Rights Upon Termination. The parties' confidentiality (Section 9.14) and indemnification (Section 5.3) obligations under this Agreement shall continue after termination.
- 7.8 NPDB Reporting Obligation. In the event that any Provider is given notice that their participation in this Agreement is being terminated for any cause relating to credentialing, re-credentialing, and quality of care or for any reason reportable to the National Practitioner Data Bank ("NPDB"), Provider shall have the appeal rights as specified in the Participating Provider Manual.
- 7.9 ACA Revocation Right. To the extent that any services involve Members covered under a health plan related to the Affordable Care Act, all delegated activities may be revoked at any time if the United States Health and Human Services (HHS) or Moda Health Plan, Inc. determines that Provider has not performed the delegated activities satisfactorily.

VIII. APPEALS AND DISPUTE RESOLUTION

- 8.1 Appeal Procedure. Provider shall have the right to appeal compensation disputes to Moda Health including disputes regarding adjustments pursuant to Section 6.7. Such appeal shall result in review by the Moda Health Director with oversight of Claims and the Moda Health Medical Director or their designees. If such appeal remains unresolved to the satisfaction of Provider, a final appeal may be made in writing to an appeals committee comprised of the senior director, vice president or senior vice president of Claims, and director or vice president of Professional Relations, and a hearing will be held unless waived by the parties.
- 8.2 Member Appeal. On behalf of a Member and with the Member's consent, Provider may appeal a pre-service denial to Moda Health pursuant to the appeal grievance procedures set forth in the Health Benefits Plan providing coverage to the Member. If a Member consents to a Provider's appeal of a pre-service denial, as provided herein, such consent must be in writing and provide that the Member agrees to be bound by the decisions rendered in the appeal process to the same extent as if the Member were prosecuting the appeal.
- 8.3 Dispute Resolution. Any claims, disputes, or controversies between the parties arising out of or relating to this Agreement that cannot be resolved informally shall be submitted to binding arbitration in the City of Portland, Oregon and in accordance with the rules of the Portland Arbitration Service. Any judgment arising from the arbitration may be entered by either party in any court having jurisdiction. The costs of arbitration will be shared equally by Provider and Moda Health, except that each party will be responsible for its own attorney's fees.

IX. MISCELLANEOUS

- 9.1 Professional Liability Insurance. During the term of this Agreement, Provider shall maintain professional liability insurance in an amount not less than **\$1,000,000 per claim/\$3,000,000** aggregate. This coverage is to be primary, and insure against claims for damages arising by reason of personal injury, including bodily injury or death, directly or indirectly, in connection with the acts or omissions of Provider and/or its agents or employees, with the exception of general liability. Such coverage may be provided via a self-insured program. Provider will not make material changes to its coverage without giving thirty (30) days prior written notice to Moda Health. Upon request by Moda Health, Provider will produce evidence of such insurance.
- 9.2 General Liability Insurance. As applicable, during the term of this Agreement, Provider shall maintain general liability insurance in an amount not less than **\$1,000,000 per claim/\$3,000,000** aggregate. This coverage is to be primary, and insure against claims for damages arising by reason

of personal injury, including bodily injury or death, directly or indirectly, in connection with the acts or omissions of Provider and/or its agents or employees, with the exception of professional liability. Such coverage may be provided via a self-insured program. Provider will not make material changes to its coverage without giving thirty (30) days prior written notice to Moda Health. Upon request by Moda Health, Provider will produce evidence of such insurance.

9.3 Records.

9.3.1 Records. As applicable, Provider and Moda Health shall maintain reasonable and necessary financial, medical, and other records pertinent to this Agreement. All financial records pertinent to this Agreement shall be maintained pursuant to generally accepted accounting principles, and other records shall be maintained to the extent necessary to clearly reflect actions taken. All medical records shall conform to professional standards, permit encounter claim review and allow for an adequate system for follow-up treatment. All records shall be retained by the parties for at least ten (10) years or such other longer period required by applicable law.

9.3.2 Confidentiality of Personal Health Information. Provider and Moda Health recognize each Member's right to confidentiality of personal health information. Moda Health and Provider agree to abide by applicable state and federal laws and regulations concerning confidentiality of patient medical records and personal health information, including financial information. The parties will cooperate in the exchange of information sufficient to permit Moda Health and Provider to perform its functions under this Agreement and its Health Benefit Plans. Moda Health agrees not to disclose any personal health information or privileged information to third parties, except, to the extent permitted by law, in its performance of Peer Review, Utilization Review and Quality Assurance Review programs, or in compliance with applicable state or federal law.

9.3.3 Request for Records. Subject to any legal restrictions and upon request by Moda Health, Provider will promptly provide copies of the medical and billing records to Moda Health, at no charge, for those purposes which Moda Health deems reasonably necessary, including without limitation, claims adjudication, quality assurance, medical audit, credentialing or re-credentialing.

9.4 Notices and Communication. The following provisions will apply to communications between the parties to this Agreement:

9.4.1 Certain Notices Required Under This Agreement. The following notices must be sent via overnight delivery with delivery confirmation or certified mail, return receipt requested:

- a. all notices for termination of this Agreement and/or termination of any addendum, exhibit or attachment to this Agreement;
- b. all requests for mediation; and
- c. all requests for arbitration.

Mailed notices must be addressed to the parties at the following addresses:

To Moda Health:

**Moda Health Plan, Inc.
601 SW Second Avenue
Portland, OR 97204-3156
Attn: Medical Provider Contracting**

To Provider:

**CLACKAMAS COUNTY
COMMUNITY HEALTH
2051 Kaen Road
Oregon City, OR 97045**

Either party may change its address for notice by written notice given in accordance with this paragraph. Notice sent to the last known address of a party will be deemed sufficient notice. Notices will be deemed given as of the date of actual receipt for personal delivery and email and three days after mailing for First Class mail delivery.

9.4.2 All Other Notices and Communications. All other notices and communications between the parties which are necessary for the proper administration of this Agreement (including notices required within this Agreement which are not included in Section 9.4.1 above) may be communicated via regular U.S. mail, confirmed facsimile, or electronic mail.

In addition, Moda Health may notify Provider of policy changes, Participating Provider Manual changes, and other general communications by electronic mail or through a conspicuous posting on its Provider Web Site. Notice in this manner shall constitute notice under the Agreement. Moda Health shall provide Provider sixty (60) days prior notice of any such changes.

9.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.

9.6 Medical Decisions. A licensed doctor of medicine or osteopathy shall be retained by Moda Health and shall be responsible for all final medical and Mental Health decisions relating to coverage or payment made pursuant to this Agreement.

9.7 Force Majeure. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its reasonable control, and occurring without its fault or negligence, including but not limited to acts of nature, government restrictions, wars, strikes, and insurrections. As a condition to the claim of non-liability, the party experiencing the delay shall give the other party prompt written notice of the reason for its non-performance and the date by which it believes performance can be resumed.

9.8 Entire Agreement. This Agreement supersedes any and all agreements, either written or oral, between the parties hereto with respect to the subject matter contained herein. In the event of a conflict or inconsistency between this Agreement and any exhibit, attachment, plan program, policy, manual or any other document affecting this Agreement, the provisions of this Agreement shall control.

9.9 Authority. Provider has the unqualified authority to and hereby binds itself and any health care professionals employed or contracted by Provider to provide services covered by this Agreement, to the terms and conditions of this Agreement, including any addenda, appendices, attachments and exhibits, extensions and renewals, as applicable. In the event Provider does not possess the right to legally bind any of its employed or contracted physicians to this Agreement, Provider shall ensure that each such physician executes a statement in substantially the form provided by Moda Health in which each such physician agrees to be bound by the terms and conditions of this Agreement, including any addenda, appendices, attachments and exhibits, extensions and renewals, as applicable.

9.10 Severability and Right to Terminate. If any provision of this Agreement is held by a court of competent jurisdiction or applicable state or federal law to be invalid, void or unenforceable, the remaining

provisions will nevertheless continue in full force and effect; provided, however, that in such event, either party shall have the right to terminate this Agreement on ninety (90) calendar days written notice to the other that this Agreement is being terminated pursuant to this section.

- 9.11 Amendment. This Agreement may be amended by Moda Health in any one of three formats (1) Moda Health may at any time Amend this agreement by written notification to provider with sixty (60) days' notice. If Provider objects to the amendment, Provider must so advise Moda Health in writing within thirty days after receipt of the amendment. If Moda Health accepts Provider's rejection of the amendment, the amendment will be withdrawn. If the amendment is not withdrawn, Moda Health shall notify Provider that the amendment has not been withdrawn and the amendment shall become effective as written. If Provider does not withdraw the objection, Provider may terminate the agreement as provided in Section 7.2. (2) Moda Health may at any time without advance notice send Amendments to the Agreement to comply with CMS regulatory requirements as required by law. (3) Moda Health may amend this Agreement at any time by written agreement of both parties.
- 9.12 Assignment. Neither party may assign this Agreement without the written consent of the other party.
- 9.13 Waiver. Any waiver of compliance with any provision or waiver of the breach of any provision of this Agreement must be in writing and signed by the waiving party. Any such waiver shall not operate as, or be deemed to be, a waiver of any prior or future breach of such provision or of any other provision.
- 9.14 Confidentiality. The terms of this Agreement are confidential and proprietary information. Each of the parties agrees to use its best efforts to maintain the confidentiality of such information and to safeguard such information against loss, theft, or other inadvertent disclosure. To the extent consistent with applicable state law, neither party will disclose this or any other proprietary information or trade secret without the express written approval of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Moda Health Plan, Inc.
601 SW Second Avenue
Portland, OR 97204-3156

**CLACKAMAS COUNTY COMMUNITY
HEALTH**
2051 Kaen Rd Ste 367
Oregon City, OR 97045

(Signature)

(Signature)

William E. Johnson, MD, MBA
(Print Name)

Richard Swift
(Print Name)

President, Moda Health
Sr. Vice President, Moda, Inc.
(Title)

Director
(Title)

(Date)

(Date)

93-6002286
(Tax ID Number)

Prepared by: C. Bender 9/6/18

**EXHIBIT A
PROVIDER INFORMATION**

Tax ID#: 936002286

Location(s)

Physical Address (Primary): see attached list.		
City:	State:	Zip:
Phone #:	Fax #:	
NPI:		

Physical Address 2 (if applicable):		
City:	State:	Zip:
Phone #:	Fax #:	
NPI:		

Claims Remittance / Billing Location

Remittance / Billing Address*: 2051 Kaen Road Ste 367		
City: Oregon City	State: OR	Zip: 97045
Phone #: 503-742-5300	Fax #: 503-742-5979	
Office Contact: Sarah Jacobson		
Contract Administrator email address (if applicable): sjacobson@co.clackamas.or.us		

Payments will be made to Group/Clinic unless otherwise requested

**Remittance address listed must match information provided in box 33 on CMS 1500 or equivalent form, or box 2 on a UB-04 or equivalent*

October 3, 2019

COPY

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Central City Concern for the
Law Enforcement Assisted Diversion (LEAD) Program

Purpose/Outcomes	To provide Law Enforcement Assisted Diversion (LEAD) program to address low-level drug street crime in Clackamas County.
Dollar Amount and Fiscal Impact	\$284,304.
Funding Source	County General Funds
Duration	Effective July 1, 2019 terminates June 30, 2020.
Previous Board Action	N/A
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Counsel Review	County counsel has reviewed and approved this document on September 19, 2019
Contact Person	Vahid Brown, Houseless Policy Coordinator (503) 742-5345
Contract No.	9450

BACKGROUND:

The Administration Division of the Health, Housing, and Human Services Department requests the approval of Personal Services Contract with Central City Concern (CCC). CCC is assisting with the Law Enforcement Assisted Diversion (LEAD) program. LEAD is a program developed to address low-level drug street crime in Clackamas County. The goal of LEAD is to improve community health and safety by using specific human services tools and coordinating them with law enforcement.

In the program's first year of operation, a six month review demonstrated significant positive outcomes. The rates of arrests, new criminal charges, nights in jail, and failure to appear in court all declined significantly for the participants in the program, all of which represents significant cost savings to the County. The LEAD case managers have also been successful in assisting clients meet a wide spectrum of needs, including employment, accessing benefits, obtaining housing or shelter, getting substance use disorder treatment, and resolving outstanding legal issues. As of the end of August, 2019, seven LEAD participants who were experiencing homelessness before entering the program have obtained permanent housing.

With nearly 70 participants in the program the two LEAD case managers have full caseloads. Additional funds allocated to LEAD in this contract will allow for two additional case managers to be added to the program, and thus a doubling of the current number of participants served.

RECOMMENDATION:

Staff recommends Board approval of this Agreement and authorization for Richard Swift, H3S Director to sign the agreement and future amendments to the Agreement on behalf of Clackamas County.

Respectfully submitted,

 Pamela A. Cook, H3S DEPUTY DIRECTOR / FOL

Richard Swift, Director
Health, Housing & Human Services



**CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Personal/Professional Services Contract (this "Contract") is entered into between Central City Concern ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Health, Housing and Human Services Department.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective on July 1, 2019 regardless of the date of signature. Unless earlier terminated or extended, this Contract shall expire on June 30, 2020. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Serves as a partner to assist in the Law Enforcement Assisted Diversion (LEAD) program. LEAD is a program developed to address low-level drug street crime in Clackamas County. The goal of LEAD is to improve community health and safety by using specific human services tools and coordinating them with law enforcement **Exhibit A.**

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed Two Hundred Eighty Four Thousand Three Hundred and Four Dollars (\$284,304) for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit A.**

4. Travel and Other Expense. Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

Applicant: Central City Concern
Address: 33 NW Broadway, Portland, Oregon 97209
EIN: 93-0728816

Contractor Contract Administrator: Karen Kern
Phone No.: 971-271-6247
Email: Karen.Kern@cccconcern.org

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

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to

Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and

the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

- 20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall

deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

22. **NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
23. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
24. **FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
25. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
26. **WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
27. **COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
 - (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
 - (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
 - (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
 - (D) The Contractor shall promptly, as due, make payment to any person or co-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 the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
28. **CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire

information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by its breach of its data security or confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.


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

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

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

Central City Concern

Clackamas County



Authorized Signature Date 09/24/2019

Richard Swift _____
Date

Sarah Chisholm / CFO
Name / Title (Printed)

Approved as to Form:

1311104-16
Oregon Business Registry #

County Counsel Date

Non-Profit / Oregon
Entity Type / State of Formation

October 3, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for an Intergovernmental Grant Agreement with the State of Oregon
Criminal Justice Commission (CJC) to continue providing Mental Health Court (MHC) services

Purpose/Outcomes	Provides Clackamas Health Centers (CHC) reimbursement for treatment as an alternative criminal justice sentence for individuals living with mental illness, substance use disorders and co-occurring disorders.
Dollar Amount and Fiscal Impact	Criminal Justice Commission (CJC) Mental Health Court (MHC) Grant award of \$254,768.00 No County General Funds are involved. No matching funds required.
Funding Source	State of Oregon, Criminal Justice Courts
Duration	Effective July 1, 2019 and a June 30, 2021 expiration.
Previous Board Action	The Board last reviewed and approved this contract on October 12, 2017, agenda item A4.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
Counsel Review	County Counsel has reviewed and approved this document. It was approved on September 25, 2019.
Contact Person	Deborah Cockrell 503-742-5495
Contract No.	9481

BACKGROUND:

Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of Grant Agreement #9481 (SC-21-037) with the State of Oregon CJC for Adult Drug Treatment Court services. Treatment Courts are a collaboration between Oregon Circuit Court, Clackamas County District Attorney's Office, Clackamas Indigent Defense Corporation, Clackamas County Community Corrections, and Health Centers – Behavioral Health Centers.

The CJC grants are targeted to improve effectiveness of state and local criminal justice systems through state and federal resources. Specifically, provide judicial response allowing individuals whose crimes are the result of a substance use or co-occurring disorder an alternative to incarceration.

This is a revenue contract for CHC. The maximum contract value is \$254,768.00. No County General Funds are involved. The Agreement is effective July 1, 2019 and will continue until June 30, 2021. This is a retro-active request due to receiving it from the state after July 1, 2019.

RECOMMENDATION:

Partners of the Mental Health Court recommends the Board approval of this Grant Agreement for the CJC Mental Health Court and authorizes Richard Swift, H3S Director be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

October 3, 2019

COPY

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Personal Services Contract with Central City Concern for the
Law Enforcement Assisted Diversion (LEAD) Program

Purpose/Outcomes	To provide Law Enforcement Assisted Diversion (LEAD) program to address low-level drug street crime in Clackamas County.
Dollar Amount and Fiscal Impact	\$284,304.
Funding Source	County General Funds
Duration	Effective July 1, 2019 terminates June 30, 2020.
Previous Board Action	N/A
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Counsel Review	County counsel has reviewed and approved this document on September 19, 2019
Contact Person	Vahid Brown, Houseless Policy Coordinator (503) 742-5345
Contract No.	9450

BACKGROUND:

The Administration Division of the Health, Housing, and Human Services Department requests the approval of Personal Services Contract with Central City Concern (CCC). CCC is assisting with the Law Enforcement Assisted Diversion (LEAD) program. LEAD is a program developed to address low-level drug street crime in Clackamas County. The goal of LEAD is to improve community health and safety by using specific human services tools and coordinating them with law enforcement.

In the program's first year of operation, a six month review demonstrated significant positive outcomes. The rates of arrests, new criminal charges, nights in jail, and failure to appear in court all declined significantly for the participants in the program, all of which represents significant cost savings to the County. The LEAD case managers have also been successful in assisting clients meet a wide spectrum of needs, including employment, accessing benefits, obtaining housing or shelter, getting substance use disorder treatment, and resolving outstanding legal issues. As of the end of August, 2019, seven LEAD participants who were experiencing homelessness before entering the program have obtained permanent housing.

With nearly 70 participants in the program the two LEAD case managers have full caseloads. Additional funds allocated to LEAD in this contract will allow for two additional case managers to be added to the program, and thus a doubling of the current number of participants served.

RECOMMENDATION:

Staff recommends Board approval of this Agreement and authorization for Richard Swift, H3S Director to sign the agreement and future amendments to the Agreement on behalf of Clackamas County.

Respectfully submitted,

 Pamela A. Cook, H3S DEPUTY DIRECTOR / FOL

Richard Swift, Director
Health, Housing & Human Services



**CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT**

This Personal/Professional Services Contract (this "Contract") is entered into between Central City Concern ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Health, Housing and Human Services Department.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective on July 1, 2019 regardless of the date of signature. Unless earlier terminated or extended, this Contract shall expire on June 30, 2020. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Serves as a partner to assist in the Law Enforcement Assisted Diversion (LEAD) program. LEAD is a program developed to address low-level drug street crime in Clackamas County. The goal of LEAD is to improve community health and safety by using specific human services tools and coordinating them with law enforcement **Exhibit A.**

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed Two Hundred Eighty Four Thousand Three Hundred and Four Dollars (\$284,304) for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in **Exhibit A.**

4. Travel and Other Expense. Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

Applicant: Central City Concern
Address: 33 NW Broadway, Portland, Oregon 97209
EIN: 93-0728816

Contractor Contract Administrator: Karen Kern
Phone No.: 971-271-6247
Email: Karen.Kern@cccconcern.org

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

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to

Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and

the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

- 20. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.
- 21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall

deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

22. **NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
23. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
24. **FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
25. **FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
26. **WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
27. **COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
 - (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
 - (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
 - (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
 - (D) The Contractor shall promptly, as due, make payment to any person or co-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 the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
28. **CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire

information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the County.

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by its breach of its data security or confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

29. CRIMINAL BACKGROUND CHECK REQUIREMENTS. Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the County may perform services under this Contract or be given access to Personal Information, Confidential Information or access to County facilities.


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

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

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

Central City Concern

Clackamas County



Authorized Signature Date

Richard Swift _____ Date

Sarah Chisholm / CFO _____
Name / Title (Printed)

Approved as to Form:

1311104-16 _____
Oregon Business Registry #

County Counsel Date

Non-Profit / Oregon _____
Entity Type / State of Formation



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

October 3, 2019

Board of Commissioners
Clackamas County

Members of the Board:

**Approval to sign a Grant Agreement with Metro for Regional Travel Options (RTO) Grant
for Safe Routes to School Program Coordinator**

Purpose/ Outcomes	Execute a Grant Agreement with Metro to hire a part-time Safe Routes to School Program Coordinator on a contract basis.
Dollar Amount and Fiscal Impact	Total cost of the project is \$133,735.00 ODOT Grant award is \$120,000.00 10.27% in-kind match of \$13,735.00 is required
Funding Source	Road Fund
Duration	Upon execution of contract through July 31, 2022
Previous Board Action	Approval to accept grant award on August 8, 2019
Counsel Review	Reviewed and approved by County Counsel on 9/24/19
Strategic Plan Alignment	<ul style="list-style-type: none">• Build a strong infrastructure
Contact Person	Scott Hoelscher, Senior Transportation Planner – 503-742-4533
Contract No.	Grant IGA No. 936220

BACKGROUND:

The Department of Transportation and Development (DTD) is in the final year of an Oregon Department of Transportation (ODOT) non-infrastructure grant to implement Safe Routes to School (SRTS) programs. The purpose of the ODOT grant is to work with county schools to identify and plan for the development of safe places for children to walk and bike to school. To sustain and continue to grow the County's SRTS program, DTD applied for and was awarded funds to hire a part-time (20 hours per week) SRTS Coordinator on a contract basis. The three-year SRTS Coordinator position will be housed within DTD but will not be a county employee.

RECOMMENDATION:

Staff respectfully requests that the Board of County Commissioners to sign the attached Intergovernmental Agreement (IGA) with Metro for the Regional Travel Options Grant for Safe Routes to School Program Coordinator

Respectfully Submitted,

Scott Hoelscher, Senior Transportation Planner
Department of Transportation and Development



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936220

Project: Clackamas County Safe Routes to School Program Coordinator

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

A. Recitals

1. Metro and its Regional Travel Option's (RTO) program is the recipient of Federal Transit Administration ("FTA") Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) grant funds, and wishes to enter into this Agreement with the Grantee, utilizing these federal funds.
2. Metro considers the Grantee to be a **subrecipient** of federal funds. Funding for this project is obtained from a Grant Agreement between Metro and the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) or Surface Transportation Program (STP) funds, CFDA No. 20.507. As federal funds are involved in the Agreement, Exhibit C – Federal Clauses, Attachments A and B and Exhibit D – Department of Labor Clauses are attached hereto and by this reference made a part of this Agreement as if set forth in full.
3. The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments and non-profit agencies in managing demand on the transportation system and increasing use of travel options.
4. Metro selected Grantee, through a competitive process, to receive partial funding for the purpose of supporting the **Safe Routes to School Program Coordinator**. This project is expected to further the RTO effort toward accomplishing Regional Transportation Plan modal target of 40% non-SOV trips or higher, by the year 2040. The work plan elements outlined here are elements of a much larger Grantee work plan that is being partially funded using requested METRO RTO grant dollars for Metro fiscal years 19-20 through 21-22.

B. Effective Date and Duration

The beginning date of this Agreement is July 1, 2019, and shall remain in effect until and including July 31, 2022 unless terminated or extended as provided in this Agreement. Costs incurred on or after July 1, 2019 which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.

C. Scope of Work

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

D. Compensation

The total Agreement amount is **ONE HUNDRED THIRTY-THREE THOUSAND SEVEN HUNDRED THIRTY-FIVE AND NO/100ths DOLLARS (\$133,735.00)**. This amount includes (1) FTA GRANT funds to be dispersed to Grantee not to exceed **ONE HUNDRED TWENTY THOUSAND AND NO/100ths DOLLARS (\$120,000.00)**; (2) Grantee's non federal local match of **THIRTEEN THOUSAND SEVEN HUNDRED THIRTY-FIVE AND NO/100ths DOLLARS (\$13,735.00)**.



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936220

E. Payment

1. All invoice payments are conditional upon Metro's Project Manager approval of the Quarterly Progress Reports. Grantee shall present cost reports, reimbursement requests and progress reports to Metro's RTO Project Manager on a quarterly basis.
2. Qualified costs are direct project costs, incurred by the Grantee and personal services contractor(s) during the term of this Agreement that are eligible for federal funds. Metro shall reimburse Grantee for qualified costs for work described in Exhibit A, in accordance with:
 - 2 CFR 200 - Uniform Guidance – Super Circular
3. Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. If Metro requests documentation, including without limitation copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense, Metro must receive the documentation before Metro makes payment.

F. Subcontracts

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

G. Records Maintenance – Access

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936220

H. Indemnity

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

I. Termination

Metro may terminate this Agreement for cause or convenience. In the event of termination, Grantee shall be entitled to payment for qualified costs incurred before the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro shall not waive any claim or remedies it may have against Grantee.

J. Insurance

1. Grantee shall purchase and maintain at Grantee's expense, the following types of insurance, covering Grantee, its employees, and agents:
 - a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Grantee's coverage will be primary as respects Metro
 - b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000.00 per occurrence
 - c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000.00 per accident or disease.
2. Oregon public entities may self-insure to meet the minimum insurance requirements of this section J, to the extent that it maintains a self-insurance program that complies with the insurance requirements applicable under this Section J.

K. Right to Withhold Payments

Metro shall have the right to withhold from payments due Grantee such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grantee's performance or failure to perform under this Agreement or the failure of Grantee to make proper payment to any suppliers or subcontractors. Metro shall withhold 20% of the FTA grant funds, which it will release to Grantee after Metro accepts Grantee's final report.

L. Federal, State, and Local Law Compliance

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936220

2. This Agreement is subject to a financial assistance agreement between Metro and the Federal Transit Administration (FTA). Grantee shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof:

- the terms and conditions applicable to a “recipient” set forth in the October 1, 2018 FTA Master Agreement [FTA MA 25] or most recent between Metro and the FTA
- FTA Circular 5010.1E, Grant Management Requirements
- FTA Circular 4220.1F, 3rd Party Procurement Requirements
- 2 CFR 200 - Uniform Guidance – Super Circular

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

M. Discrimination Prohibited

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

N. Ownership of Documents and Credit to Metro

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

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

O. Project Information

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936220

P. Independent Contractor Status

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

Q. Assignment

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

R. Choice of Law

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

S. No Waiver of Claims

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

T. Modification

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

U. Severability

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

V. No Special or Consequential Damages

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936220

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

Clackamas County

By: _____

Printed: _____

Title: _____

Date: _____

Metro

By: _____

Printed: _____

Title: _____

Date: _____

Overhead Rate Negotiated: (requires documentation) _____ **(filled in by Metro)**



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

CLACKAMAS COUNTY SAFE ROUTES TO SCHOOL - SCOPE OF WORK (SOW)

This project will coordinate Safe Routes to School (SRTS) activities and programming at Clackamas County schools within the Metro Service Boundary. A part-time Safe Routes to School Coordinator will be contracted to conduct outreach and coordinate SRTS programming. County staff from the Department of Transportation and Development (DTD); Health, Housing and Human Services (H3S) and Public and Government (PGA) will provide support to implement and complete the scope of work.

Project Goals

Clackamas County's vision for Safe Routes to School (SRTS) is to create a sustainable program available to all community members and to make bicycling and walking to school a feasible form of transportation, thereby encouraging a healthy and active lifestyle at an early age. The program includes 6 goals to realize this vision.

- 1. Build awareness of Safe Routes to School and promote active transportation options through encouragement activities in at least 10 schools in Clackamas County.*
- 2. Expand bicycle and pedestrian safety education at Clackamas County schools.*
- 3. Work with community and law enforcement partners to improve road user behavior around schools by obeying traffic safety laws and sharing the road safely.*
- 4. Work with partners to establish a list of priority infrastructure and operational improvements for at least one Title One school each year.*
- 5. Regularly collect, analyze and share data by conducting tallies and surveys to evaluate program performance.*
- 6. Ensure the Clackamas County SRTS program prioritizes activity and investment in areas with a high percentage of communities of color and low-income residents.*

Evaluation Plan

The Clackamas County Safe Routes to School Project will involve collecting data from schools at least once a year via the classroom tally sheets available from the National SRTS database. As detailed in the below scope of work Clackamas SRTS Program plans to build on existing evaluation methods to gather additional feedback from students, teachers, school administrators, and parents.

Clackamas SRTS will collect data to address the environment, equity and health, economy, efficiency and engagement elements of Metro's Multiple Account Evaluation Framework. Data will be reported to Metro



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

quarterly and combined into a Final Report that tracks progress toward goals and summarizes the schools and students involved in encouragement events and bike/ped safety education, as well as progress on school Action Plans.

Project Area

The project area includes school districts and schools within the urban area of Clackamas County.

Within the Metro Service Boundary there are six school districts: Gladstone, Lake Oswego, North Clackamas School District, Oregon City, Oregon Trail and West Linn-Wilsonville.

Project Staff

The primary project team members and percent of time they will work on this project are listed below.

Staff Name	Title	Project Role	Experience (yrs)	% of Time
To Be Determined	Safe Routes to School Coordinator	SRTS Outreach and Coordination	-	100%
Scott Hoelscher	Senior Planner – Multimodal Transportation	Grant Manager	15	10-20%
Brett Setterfield	Planner II	GIS Services	3	5-10%
Christian Snuffin	Senior Civil Engineer	Civil Engineering	15	0-10%
Cameron Ruen	Community Relations Specialist	Public & Government Affairs	3	0-7%
Mallorie McDowell	Engineering Technician	MUTCD; ADA compliance; school zone safety	14	5-10%



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

Rob Sadowsky	Transportation Safety Outreach Coordinator	Drive to Zero – Outreach Safety Campaign	30	5-10%
Abe Moland	Health and Transportation Impact Planner	Health Impact Assessments/ Walking School Bus	3	10-15%

Tasks

1. Outreach and Administration			
1.1	SRTS Coordinator <i>A half-time SRTS Coordinator will work with districts, cities, schools, Clackamas County, community groups, and others to support SRTS programming throughout the county. The position will be contracted by the County, with a staff time local match to support outreach, website updates, Action Plans, and other coordination.</i>	Ongoing through June 30, 2022	SRTS Coordinator hired Log of coordination meetings attended with districts, cities, and other partners (log of meetings attended).
1.2	Countywide SRTS Meetings <i>Convene annual SRTS stakeholders to prepare for the next semester and discuss upcoming events, funding opportunities, and ideas for new activities.</i>	Yearly through June 30, 2022	Countywide SRTS meeting sign-in sheets, agendas, and meeting notes.



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

<p>1.3</p>	<p>SRTS Capacity Building/Laying the Groundwork</p> <p><i>Coordinator presentations or meetings with school district boards, PTA/PTO groups, potential SRTS champions, and others to inform constituents about SRTS benefits and build interest in pursuing local SRTS activities.</i></p> <p><i>Offer Clackamas SRTS Interest Survey with Menu of Activities</i></p> <p><i>Explain Oregon SRTS Recognition Levels and invite schools to take next steps.</i></p> <p><i>Track and prioritize Title 1 schools for outreach and support.</i></p> <p><i>Develop relationships with People of Color-led organizations and other historically marginalized groups. Work with these groups to spread the word about SRTS benefits and events. Find out about their community priorities and provide culturally-sensitive messaging.</i></p> <p><i>As needed provide materials, interpretation, and programming in Spanish, Russian, and other languages.</i></p>	<p>Ongoing through June 30, 2022</p>	<p>At least 6 presentations or initial meetings per year</p> <p>Sign-in sheets</p> <p>Interest survey to gauge interest in SRTS activity participation, next steps, and school goals.</p> <p>School work plans to address identified goals and implement requested SRTS activities.</p> <p>Catalogue of activities and participation at Title 1 Schools in the county.</p> <p>Outreach list & potential partnership opportunities.</p> <p>Culturally appropriate messaging strategy</p>
<p>2. Education</p>			
<p>2.1</p>	<p>Walking School Bus</p> <p><i>In collaboration with the County Health Department initiate a Walking School Bus program at 1-2 Title 1 elementary schools each year of the grant</i></p>	<p>Spring 2020, 2021, 2022</p>	<p>Walking School Bus Guidelines</p> <p>Route Maps showing meet-up spots and walking route</p> <p>Surveys to track participation rates and obtain feedback</p>
<p>2.2</p>	<p>Bike Education</p> <p><i>Bike safety education will be delivered in collaboration with a technical service provider.</i></p>	<p>Spring 2021 or Spring 2022</p>	<p>Bike education at 1 school (10 hours)</p>
<p>2.3</p>	<p>Poster Art Contest</p> <p><i>Implement an annual Clackamas County Safe Routes to School Poster Art Contest</i></p>	<p>Spring 2020, 2021, 2022</p>	<p>Poster Art Contest outreach materials</p> <p>Number of submissions</p> <p>Contest winners</p> <p>Participant and teacher surveys to track learning objectives and get feedback on the contest.</p>



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

3. Encouragement			
3.1	<p>Countywide Walk+ Roll to School Days</p> <p><i>Continue supporting interested schools in celebrating Walk+Roll to School Days by connecting them with materials and resources for celebratory activities such as bike fairies, cocoa for carpools etc. Schools can sign-up to participate at the countywide meetings, during initial presentations, or by contacting the SRTS Coordinator directly. The SRTS Program will prioritize Title I schools for direct support and staffing assistance.</i></p>	<p>October 2019, 2020, 2021</p> <p>May 2020, 2021, 2022</p>	<p>Annual Fall International Walk+Roll to School Day</p> <p>Annual Spring Walk+Roll to School Challenge</p> <p>Participation numbers (Count stickers handed out to students who walk/bike).</p>
3.2	<p>Encouragement Events and Activities</p> <p><i>Provide ideas, resources, and technical support for encouragement events and activities such as Golden Sneaker, Bike Fairy, Safety Assemblies, Frequent Walker Program.</i></p> <p><i>Communicate best practices to schools through the Clackamas County SRTS Handbook.</i></p> <p><i>Create an Interest Survey with Menu of Activities and a 1-page guide to the handbook and new activity ideas.</i></p> <p><i>Add and maintain SRTS encouragement resources on the Clackamas SRTS website.</i></p> <p><i>Provide materials, interpretation, and programming in Spanish, Russian, and other languages, as needed.</i></p>	<p>Ongoing through June 30, 2022</p>	<p>At least 10 schools that host one event or activity.</p> <p>Log of event/activity locations and participation numbers. (Count stickers handed out to students who walk/bike).</p> <p>Incentives donated and handed out.</p> <p>1-pager for the Handbook</p> <p>Data from Interest Survey with Menu of Activities.</p>



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

4. Enforcement			
4.1	<p>School Area Transportation Safety Campaign</p> <p><i>Work with the Clackamas County Drive to Zero program and Metro’s SRTS Safety Campaign development. The campaign may involve street banners or lawn signs, and communicate safety messages with school parents as well as neighbors and others who may be traveling through the school area.</i></p>	Ongoing through June 30, 2022	<p>Participation in Metro’s SRTS Safety Campaign</p> <p>1-2 pilot communities to test materials</p>
5. Engineering			
5.1	<p>School Action Plans & Suggested Route Maps</p> <p><i>Work with County engineers and City staff to update older Action Plans and create new Action Plans at schools within the Metro boundary. Work with Clackamas County Health Human Services (H3S) to incorporate a Health and Safety lens to identified Action Plans and conduct health impact assessments on identified projects as needed. Action Plans will be collaboratively written by County engineers and SRTS Coordinator. The SRTS Program will prioritize Title I schools for Action Plan development.</i></p>	Ongoing through June 30, 2022	<p>Complete 1 new or update 1 existing Action Plan, with Suggested Route Map each year.</p>
6. Evaluation			
6.1	<p>Interest Survey</p> <p><i>Gauge interest in SRTS activity participation, next steps, and school goals. Use after initial meetings with schools, districts, or others.</i></p>	Ongoing though June 30, 2022	<p>Interest survey data</p> <p>School work plans to address identified goals and implement requested SRTS activities.</p>
6.2	<p>Hand Tallies</p> <p><i>Encourage and provide technical assistance and materials for schools to collect hand tallies and enter them into the National Data Center.</i></p>	Spring 2020, 2021, 2022	<p>Hand tally data for a minimum of one school per year for every year of the program.</p> <p>National Data Center summary report for each school surveyed.</p>



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

6.3	Parent Surveys <i>Encourage and provide technical assistance and materials for County schools to collect parent surveys and enter them into the National Data Center. Consider online only due to limited capacity.</i>	Spring 2020 Spring 2022	Baseline parent survey data for at least one new school each year of the program. Bi-annual follow-up parent surveys at each previously surveyed school.
6.4	Administrator Survey <i>Get feedback from principals and other school administrators about program effectiveness, preferences, and next steps. Survey will be 5-6 brief questions. Consider online only due to limited capacity.</i>	Spring 2021	Administrator survey data every odd year.
6.5	Participation Tracking <i>Use an excel database to track Clackamas SRTS Program growth and participation. Use the Oregon SRTS Recognition Level Program to structure and track school engagement.</i>	Ongoing through June 30, 2022	Catalogue of activities at each school, with dates and participation numbers. Recognition Levels of participating schools, for example: “Number of Bronze-level Programs.”
6.6	Activity Tracking <i>Generic teacher and student surveys to track preferences and effectiveness of different program activities, such as the Poster Contest and Bike Rodeo.</i>	Spring 2020, 2021, 2022	Teacher and student survey or quiz data.
6.7	Final Report <i>Outline the achievements and challenges of the Clackamas County SRTS Program during the grant cycle, including mode shift, participation, and activity effectiveness.</i>	Summer 2022	Final Report with summary statistics for the 3-year grant cycle.

Budget:

(1) FTA GRANT funds to be dispersed to Grantee not to exceed **ONE HUNDRED TWENTY THOUSAND AND NO/100TH DOLLARS (\$120,000.00)**

The amount the Grantee is required to spend to match Metro’s grant:

(2) Grantee’s non federal local match (10.27%) of **THIRTEEN THOUSAND SEVEN HUNDRED THIRTY-FIVE AND 10/100TH DOLLARS (\$13,735.00).**



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 936220

Grantee's invoices shall include:

- Metro Grant number (**936220**)
- Grantee name
- remittance address
- invoice date
- invoice number
- invoice amount
- Local Match amount
- itemized statement of work performed and expenses incurred during the invoice period
- **Required** to be submitted quarterly and uploaded into ZoomGrants



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit B

Partnership Requirements

Partnership Requirements

The purpose of the following partnership requirements are to set up Regional Travel Options (RTO) partners for success in their grant projects. As the RTO program is largely funded through ongoing allocations of Regional Flexible Funds, these requirements help partners produce solid evidence of the efficient and effective use of their regional funds. RTO is available to support partners by providing tools and guidance to achieve a successful grant project, both during the grant cycle and beyond. Partnership will multiply the benefits of the RTO grant by applying current strategies and brands while incorporating past lessons learned.

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

Instructions: Read each section below and then initial

Applying Strategies and Collaborating with RTO Partners

Grantee will:

- Review 2012-2017 RTO Strategic Plan and the 2018 RTO Strategy, when completed.
- Review RTO Marketing Strategy and use messages, approaches and techniques with applicable audiences.
- Participate in the RTO Collaborative Marketing Group, including attending bi-monthly meetings, and implementing regional marketing campaigns when applicable. Resources can be found online <http://www.oregonmetro.gov/collaborativemarketing>.
- If the grant is focused on commute options, grantee must coordinate frequently with TriMet, Wilsonville SMART, City of Portland, TMAs or other employer outreach partners affected by this project scope or located in the project geographic area to exchange existing tools, campaigns and support ECO surveys.

_____ **Initial Here**

General Tools & Resources

Grantee will use, at minimum, the tools and resources available below.

- For rideshare or vanpool matching, RTO encourages the use of Drive Less Connect www.drivelessconnect.org. Other options include Enterprise Vanpool, CarpoolWorld, ERideShare, or one of any number of mobile ridesharing apps.
- For logging trips, RTO encourages the use of Drive Less Connect www.drivelessconnect.org. RTO can provide training for using the Drive Less Connect tool upon request.
- For personalized trip planning, RTO encourages the use of TriMet Trip Planner. Contact TriMet (Adriana Britton at BrittonA@trimet.org) for language or logos if highlighting use of the tool.



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit B

Partnership Requirements

- Information on federal commuter tax benefits can be found at <https://www.nctr.usf.edu/programs/clearinghouse/commutebenefits/>

_____ **Initial Here**

Project Materials

Grantee will use, at minimum, the tools and resources available below.

- All projects shall attribute credit to the Federal Transit Administration and Metro. Print attribution on project materials (such as reports, booklets, brochures, and web pages) must read:
 - “Made possible with support from Metro and the Federal Transit Administration”
- All print ads, banners, flyers, posters, signage and videos must include the Metro logo.
- If marketing is done with audio only, spoken attribution language must be:
 - “This project is made possible by a partnership with Metro, with support by the Federal Transit Administration”
- For non-commercial promotional photo needs, browse the existing collection of RTO photos (currently located publically on Flickr). Refer to each photo’s guidance for determining attribution and any use restrictions. Project photos that have potential value to partners should be shared by uploading them to the photo website.
- Include the Metro logo on all marketing and advertising materials, both print and online (size permitting). Grantees must seek Metro approval through the grant manager of any materials where the Metro logo is included to ensure proper logo design and placement. Metro logos and usage guidelines will be emailed to grantee. If you need them again, please email Commshelp@oregonmetro.gov and CC rto@oregonmetro.gov.
- If the project designs wayfinding signage, apply the Intertwine design guidelines: http://library.oregonmetro.gov/files/intertwine_regional_trail_signage_guidelines.pdf
- For web-based resources needed for biking and walking info, include a link to Metro’s Getting Around web page, <http://www.oregonmetro.gov/gettingaround>

_____ **Initial Here**

Events and Media

Grantee will:

- Inform RTO grant manager of any event needs 90 days in advance. Examples of needed help from partners may include cross-promotion or recruiting volunteers.
- Mention support provided by Metro and the Federal Transit Administration in press releases, and social media.
- For projects that include a ceremony (e.g., ribbon-cutting, unveiling), please contact the RTO grant manager to consider partnership highlights and discuss if a Metro official should attend and speak.



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit B

Partnership Requirements

- If a reporter or media outlet inquires about efforts related to this grant project, please notify the RTO grant manager immediately. If the grant manager is not available, contact other RTO staff immediately.

____ **Initial Here**

Measurement and Evaluation

Grantee will communicate, monitor and track progress, demonstrate impact, document lessons learned, and be accountable and transparent to Metro, partners and benefiting communities by doing the following:

- Review the Multiple Accounts Evaluation (MAE) framework at the beginning of the grant cycle, prioritize measurement efforts, collect qualitative and quantitative project data, and incorporate it into the tasks and deliverables throughout the grant cycle.

Quarterly Reports: These reports are required by all grantees, to be delivered by the dates listed in ZoomGrants. Quarterly reports should contain:

- **Qualitative Data:** The purpose of qualitative data is to help illustrate the impact of a project (the how and why), based on background information, descriptive text and visuals. Stakeholder engagement can be vital part of the qualitative process. We encourage grantees to engage with stakeholders or seek advice from RTO on this topic. If the project includes conducting a survey, contact RTO staff for assistance and provide a report to RTO grant manager at least two weeks before official release.
- **Quantitative Data:** The purpose of quantitative data is to help illustrate the impact of a project based on comparable values. When calculating vehicle miles reduced, emissions reduced, gas savings or other numeric MAE metrics, use tools provided by RTO to ensure consistent methods. If collecting automated data (for example, bike/ped counters), contact RTO staff regarding format, data cleaning, and shareability.
- Data can be collected internally or from outside sources, and creative reports, visuals, and stories are encouraged. Use of past Metro reports as sources is also encouraged. Quantitative data should be combined with qualitative data to create a well-rounded project summary. See the ZoomGrants Library for more help, or contact RTO for more information.

End of Year One Check In: No later than one year after the grant begins, the grantee shall update the RTO grant manager with details confirming that the groundwork is set for this grant project to deliver measured results (for example, a baseline survey has been conducted).

End of grant project report: Grantee shall produce a final project report and the RTO Story Form in a timely manner. These products shall be consistent with initial grant application and the MAE framework outcomes highlighted in the scope of work.

____ **Initial Here**

Exhibit C – Federal Clauses \$100,000 and above



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

The Grantee agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2018 FTA Master Agreement [FTA MA 25]**, or most recent, including, but not limited to, the following:

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

For purposes of this Master Agreement:

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

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

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

(a) Federal guidance such as a:

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

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

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

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

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

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

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

- 1 Adopts an alternative course of action not expressly authorized by the Federal



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

Government in writing, and
2 Has not first secured FTA's approval of that alternative in writing,
[FTA Master Agreement §2.c (1) (2) (3)]

B. No Federal Government Obligations to Third Parties.

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

(1) The Federal Government shall not be subject to any obligations or liabilities related to:

- (a) The Project,
- (b) Any Third Party Participant at any tier, or
- (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement for the Project, and

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

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

[FTA Master Agreement, §2.f]

C. False or Fraudulent Statements or Claims.

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

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

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

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

(1) Truthfulness and accuracy of any

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

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

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

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

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

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

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

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

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

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

[FTA Master Agreement §3.f]

D. Procurement.

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

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

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

[FTA Master Agreement §17(u)]

E. Project Implementation.

Changes to Federal Requirements and Guidance.

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

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

b. Apply to the Recipient or its Project,

[FTA Master Agreement, §2.d (1)]

F. **Civil Rights.**

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

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

(1) prohibit discrimination based on:

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

(2) Comply with:

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

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

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

c. Equal Employment Opportunity.

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

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*

Exhibit C – Federal Clauses \$100,000 and above



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

- (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
 - (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13.a of this Master Agreement, and,
 - (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.
- (2) General. Recipient agrees to
- (a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:
 - 1 Race,
 - 2 Color,
 - 3 Religion,
 - 4 Sex,
 - 5 Disability,
 - 6 Age, or
 - 7 National origin.
 - (b) Take affirmative action that includes, but is not limited to:
 - 1 Recruitment advertising,
 - 2 Recruitment,
 - 3 Employment,
 - 4 Rates of pay,
 - 5 Other forms of compensation,
 - 6 Selection for training, including apprenticeship,
 - 7 Upgrading,
 - 8 Transfers,
 - 9 Demotions,
 - 10 Layoffs, and
 - 11 Terminations.
- (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:
- (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and
 - (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

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

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

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

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

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

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

(1) Federal laws, including:

- (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,
- (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C.12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities;
- (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities;
- (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
- (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

- (2) The following Federal regulations including:
- (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37,
 - (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. part 27,
 - (c) U. S. DOT regulations “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 C.F.R. part 39,
 - (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 36 C.F.R. part 1192 and
 - (e) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 C.F.R. part 35,
 - (f) U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. part 36,
 - (g) U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. part 1630,
 - (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 C.F.R. part 64, Subpart F,
 - (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and
 - (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and

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

G. Private Enterprise.

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

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

[FTA Master Agreement §15(a)]

H. Right of the Federal Government to Terminate.

Exhibit C – Federal Clauses \$100,000 and above



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

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

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

b. Financial Implications.

(1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled, and

(2) The Federal Government may:

(a) Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:

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

(b) Require the Recipient to refund

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

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

[FTA Master Agreement §12]

Exhibit C – Federal Clauses \$100,000 and above



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

I. Debarment and Suspension.

The Recipient agrees that:

- (1) It will not engage Third Party Participants that are debarred or suspended except as authorized by:
 - (a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200,
 - (b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including any amendments thereto, and
 - (c) Executive Orders Nos. 12549 and 12689. "Debarment and Suspension," 31 U.S.C. § 6101 note,
- (2) It will review the "Excluded Parties Listing System" at <http://epls.gov/> (to be transferred to <https://www.sam.gov>), if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and
- (3) It will include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Party Participants:
 - (a) Will comply with Federal debarment and suspension requirements, and
 - (b) Review the "Excluded Parties Listing System" at <http://www.epls.gov/> (to be transferred to <https://www.sam.gov>), if necessary to comply with U.S. DOT regulations 2 C.F.R. part 1200. *[FTA Master Agreement §3.b]*

J. Preference for United States Products and Services.

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

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

[FTA Master Agreement §16(a)(c)]

K. Disputes, Breaches, Defaults or Other Litigation.

The Recipient understands and agrees that:

- a. FTA Interest. FTA has a vested interest in the settlement of any disagreement involving the Project including, but not limited to:
 - (1) a major dispute,
 - (2) A breach,

Exhibit C – Federal Clauses \$100,000 and above



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

- (3) A default, or
- (4) Litigation,
- b. Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges:
 - (1) The Recipient agrees to notify immediately:
 - (a) The FTA Chief Counsel, or
 - (b) The FTA Regional Counsel for the Region in which the Recipient is located, (2)

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

- (a) A major dispute,
- (b) A breach,
- (c) A default,
- (d) Litigation, or
- (e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, and(3) The types of matters that may affect the Federal Government include, but are not limited to:
 - (a) The Federal Government's interests in the Project, or
 - (b) The Federal Government's administration or enforcement of Federal laws or regulations,
- c. Federal Interest in Recovery.
 - (1) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project, but
 - (1) Liquidated Damages. Notwithstanding the preceding section 96.c(1) of this Master Agreement, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government,



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

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

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

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

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

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

[FTA Master Agreement §96]

L. Lobbying Restrictions.

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

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

(a) To influence any:

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

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

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

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

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

1. The U.S. Congress, or
2. A State legislature, but

(3) Exception. The prohibitions of the preceding section 3.d(1) – (2) of this Master Agreement do not apply to any activity that is undertaken through proper official channels, if permitted by the underlying law or regulations,

[FTA Master Agreement §3.d (1)(2)]

M. Environmental Protections.

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

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

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

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

- (a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,
- (b) Assuring that any Project identified as a Transportation Control Measure in its State Implementation Plan will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan, and
- (c) Complying with:

1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),
2. U.S. EPA regulations, “Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects developed, Funded or Approved Under Title 23, U. S. C. or the Federal Transit Laws,” 40 C.F.R. Part 93, subpart A, and
3. Other applicable Federal conformity regulations that may be promulgated at a later date, and

(3) Violating Facilities. It will:

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit C – Federal Clauses \$100,000 and above

Metro Grant 936220

b. Clean Water. The Recipient agrees to, and assures that its Third Party Participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, and follow Federal implementing guidance, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

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

(3) **Violating Facilities.** It will.

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

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

[FTA Master Agreement §29(c),(d)]

N. Employee Protections.

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

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

(1) **Prevailing Wage Requirements.**

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

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

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

(2) **Wage and Hour Requirements.**

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

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

Exhibit C – Federal Clauses \$100,000 and above



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

(3) "Anti-Kickback" Prohibitions.

- (a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,
- (b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and
- (c) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3,

(4) Safety at the Construction Site.

- (a) Section 107 of that Contract Work Hours and Safety Standards Act, as amended, U. S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and
- (b) U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926,

[FTA Master Agreement §28.a]

O. Energy Conservation.

The Recipient agrees to and assures its Subrecipients will:

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

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

[FTA Master Agreement §30]

Exhibit C, Attachment A Debarment Certification



Metro Grant 936220

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

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

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

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

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

Signature _____

Name _____

Title _____

Organization _____

Date _____

Exhibit C, Attachment B Lobbying Certification



Metro Grant 936220

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

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

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

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

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

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

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

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

Signature of Grantee's Authorized Official

Name (Printed)

Title

Date

Exhibit D

Department of Labor Clauses



Metro Grant 936220

UNIFIED PROTECTIVE ARRANGEMENT

For Application to Capital and Operating Assistance Projects

PURSUANT TO SECTION 5333(b) OF TITLE 49

OF THE U.S. CODE, CHAPTER 53

January 3, 2011

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

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/ or the preservation or continuation of the collective bargaining rights of such employees.

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro Grant 936220

arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either:

- 1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached;
- 2) the decision has been rendered pursuant to the dispute resolution procedures in accordance with paragraph (15) of this arrangement; or
- 3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

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

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

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

(6)(a) Whenever an employee retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7) (e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid to each displaced employee during the protective period SQ

Exhibit D

Department of Labor Clauses



Metro Grant 936220

long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee's normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve, thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

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

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

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

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

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and the employee

Exhibit D

Department of Labor Clauses



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

is unable to obtain another position, either by the exercise of the employee's seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

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

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

dispute resolution determination rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

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

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

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under any disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

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

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

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

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

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

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

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

- (A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee's residence than was his/her former work location, or
- (B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.

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

Exhibit D

Department of Labor Clauses



Metro Grant 936220

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

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

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

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

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Metro Grant 936220

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

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

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

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

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

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

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

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

Exhibit D

Department of Labor Clauses



Metro Grant 936220

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

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

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

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



DAN JOHNSON
DIRECTOR

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

October 3, 2019

Board of Commissioners
Clackamas County

Members of the Board:

**Approval to Accept Award and Sign Grant Agreement for
Regional Travel Options (RTO) Grant for Oak Grove Bicycle Parking**

Purpose/ Outcomes	Accept a Regional Travel Options (RTO) grant award and execute a Grant Agreement with Metro to purchase and install bike parking in Downtown Oak Grove.
Dollar Amount and Fiscal Impact	Total cost of the project is \$9,969.00 Metro Grant award is \$9,041.00 10.27% in-kind match of \$928.00 is required
Funding Source	No cash match is required. The 10.27% match will be in-kind staff time.
Duration	Contract execution through June 30, 2020
Previous Board Action	Grant Lifecycle approved by county admin on 8/26/19
Counsel Review	Reviewed and approved by County Counsel on 9/24/19
Strategic Plan Alignment	<ul style="list-style-type: none">• Build a strong infrastructure
Contact Person	Scott Hoelscher, Senior Transportation Planner - 742-4533
Contract No.	Grant IGA No. 936289

BACKGROUND:

The Department of Transportation and Development (DTD) is partnering with Historic Downtown Oak Grove, a 501c3 nonprofit organization, to install needed bicycle parking in the Oak Grove area of urban, unincorporated Clackamas County. Currently there is not secure, accessible bicycle parking in Oak Grove along the Trolley Trail. This RTO Grant award provides funds to purchase and install bicycle parking at local Oak Grove businesses; New Urban High School and Oak Grove United Methodist Church. Custom "hoop style" bike racks designed with the Trolley Trail logo will be installed. The decorative racks will provide a needed piece of transportation infrastructure and help create a sense of place and enhance the Oak Grove neighborhood. Random bicycling parking creates an unsafe environment by blocking sidewalks and ADA accessibility. There is no required cash match for this grant.

RECOMMENDATION:

Staff respectfully requests the Board of County Commissioners accept the grant award and sign the attached Intergovernmental Agreement (IGA) with Metro for the Regional Travel Options Grant for Oak Grove Bicycle Parking.

Respectfully Submitted,

Scott Hoelscher, Senior Transportation Planner
Transportation and Development

Buehrig, Karen

From: Daniel Kaempff <Daniel.Kaempff@oregonmetro.gov>
Sent: Wednesday, May 29, 2019 4:45 PM
To: Buehrig, Karen; Hoelscher, Scott
Cc: Ted Leybold; Caleb Winter; Marne Duke; Noel Mickelberry; Kale Mattias; Marne Duke; Pamela Blackhorse
Subject: Clackamas County - RTO I&I grant application

Hello Karen and Scott,

It's my pleasure to let you know that your Innovation and Infrastructure application to the RTO Grants program was selected to be funded! Congratulations!

You will soon receive a notice through ZoomGrants to confirm the grant award and the amount (\$9,041). Expect to see this in the next day or two. Shortly after that, RTO staff will follow up with you to discuss next steps (finalizing your scopes of work and getting a grant agreement in place). Please be aware that your funding will not be available prior to July 1, 2019, so you will not be able to charge any staff time or other eligible costs incurred working on this project prior to that date.

On behalf of Metro and the RTO program, we're very much looking forward to working with you on developing your project and supporting the work you're doing.

Best regards,
Dan Kaempff
RTO Program Manager

Dan Kaempff -- Principal Transportation Planner (he/him/his)
Resource Development Section
Planning and Development Department

Office: 503.813.7559 | Mobile: 503.702.4691 | daniel.kaempff@oregonmetro.gov
Metro | 600 NE Grand Avenue | Portland Oregon USA 97232

[Spam Email](#)
[Phishing Email](#)



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936289

Project: Oak Grove Bicycle Parking

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

A. Recitals

1. Metro and its Regional Travel Option's (RTO) program is the recipient of Federal Transit Administration ("FTA") Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Block Grant (STBG) grant funds, and wishes to enter into this Agreement with the Grantee, utilizing these federal funds.
2. Metro considers the Grantee to be a **subrecipient** of federal funds. Funding for this project is obtained from a Grant Agreement between Metro and the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) or Surface Transportation Block Grant (STBG) funds, CFDA No. 20.507. As federal funds are involved in the Agreement, Exhibit C – Federal Clauses and Exhibit B - Partnership Requirements are attached hereto and by this reference made a part of this Agreement as if set forth in full.
3. The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments and non-profit agencies in managing demand on the transportation system and increasing use of travel options.
4. Metro selected Grantee, through a competitive process, to receive partial funding for the purpose of supporting the **Oak Grove Bicycle Parking** project. This project is expected to further the RTO effort toward accomplishing Regional Transportation Plan modal target of 40% non-SOV trips or higher, by the year 2040. The work plan elements outlined here are elements of a much larger Grantee work plan that is being partially funded using requested METRO RTO grant dollars for Metro fiscal years 19-20 through 21-22.

B. Effective Date and Duration

The beginning date of this Agreement is July 1, 2019, and shall remain in effect until and including July 31, 2022 unless terminated or extended as provided in this Agreement. Costs incurred on or after July 1, 2019 which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.

C. Scope of Work

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

D. Compensation

The total Agreement amount is **TEN THOUSAND SEVENTY-SIX AND NO/100th's DOLLARS (\$10,076.00)**. This amount includes (1) FTA GRANT funds to be dispersed to Grantee not to exceed **NINE THOUSAND FORTY-ONE AND NO/100th's DOLLARS (\$9,041.00)**; (2) Grantee's non federal local match of **ONE THOUSAND THIRTY-FIVE AND NO/100th's DOLLARS (\$1,035.00)**.



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936289

E. Payment

1. All invoice payments are conditional upon Metro's Project Manager approval of the Quarterly Progress Reports. Grantee shall present cost reports, reimbursement requests and progress reports to Metro's RTO Project Manager on a quarterly basis.
2. Qualified costs are direct project costs, incurred by the Grantee and personal services contractor(s) during the term of this Agreement that are eligible for federal funds. Metro shall reimburse Grantee for qualified costs for work described in Exhibit A, in accordance with:
 - 2 CFR 200 - Uniform Guidance – Super Circular
3. Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. If Metro requests documentation, including without limitation copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense, Metro must receive the documentation before Metro makes payment.

F. Subcontracts

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

G. Records Maintenance – Access

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936289

H. Indemnity

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

I. Termination

Metro may terminate this Agreement for cause or convenience. In the event of termination, Grantee shall be entitled to payment for qualified costs incurred before the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro shall not waive any claim or remedies it may have against Grantee.

J. Insurance

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

a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Grantee's coverage will be primary as respects Metro

b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000.00 per occurrence

c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000.00 per accident or disease.

2. Oregon public entities may self-insure to meet the minimum insurance requirements of this section J, to the extent that it maintains a self-insurance program that complies with the insurance requirements applicable under this Section J.

K. Right to Withhold Payments

Metro shall have the right to withhold from payments due Grantee such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grantee's performance or failure to perform under this Agreement or the failure of Grantee to make proper payment to any suppliers or subcontractors. Metro shall withhold 20% of the FTA grant funds, which it will release to Grantee after Metro accepts Grantee's final report.

L. Federal, State, and Local Law Compliance

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936289

2. This Agreement is subject to a financial assistance agreement between Metro and the Federal Transit Administration (FTA). Grantee shall comply with all applicable federal laws, regulations, executive orders, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof:

- the terms and conditions applicable to a “recipient” set forth in the October 1, 2018 FTA Master Agreement [FTA MA 25] or most recent between Metro and the FTA
- FTA Circular 5010.1E, Grant Management Requirements
- FTA Circular 4220.1F, 3rd Party Procurement Requirements
- 2 CFR 200 - Uniform Guidance – Super Circular

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

M. Discrimination Prohibited

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

N. Ownership of Documents and Credit to Metro

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

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

O. Project Information

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936289

P. Independent Contractor Status

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

Q. Assignment

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

R. Choice of Law

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

S. No Waiver of Claims

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

T. Modification

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

U. Severability

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

V. No Special or Consequential Damages

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



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Grant Agreement

Metro Grant 936289

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

Clackamas County

By: _____

Printed: _____

Title: _____

Date: _____

Metro

By: _____

Printed: _____

Title: _____

Date: _____

Overhead Rate Negotiated :(requires documentation)_____ **(filled in by Metro)**



Exhibit A – Scope of Work

Metro Grant 934636

Oak Grove Bicycle Parking Scope of Work

This project will install permanent, short-term bicycle parking at key destinations such as restaurants and schools in the Oak Grove neighborhood of unincorporated Clackamas County. The Clackamas County Department of Transportation and Development (DTD) and Historic Downtown Oak Grove (HDOG) will partner to identify downtown sites suitable for bicycle parking. Racks will be installed at downtown sidewalk locations and at private sites deficient of bicycle parking. Property owners and businesses at preliminary sites shown on Map 2 have expressed a need for bicycle parking. Early engagement with property and business owners has laid the groundwork for a project ready to be implemented successfully.

The project will also include “Park Your Bike Here” signage meeting MUTCD standards at key locations to help promote the new parking, and installation of decorative planters for safety and aesthetics at the bike corral site. The signage element will provide locational assistance and help encourage use of the bicycle as mode of travel. One sign will be placed at the location of the on-street bike corral and two to three signs will be placed near the sidewalk parking. Bicycle rack locations will be carefully integrated within the public right-of-way to provide visibility, ease of use and protection from vandalism. The Trolley Trail- themed installations will provide a secondary way-finding element and confirm to the traveler that they are “on the Trolley Trail.”

The Oak Grove Bicycle Parking project will provide a minimum of 44 bicycle parking spaces as follows:

- 1) Trolley Trail Hoop Rack: Custom-designed inverted-U style racks with Trolley Trail logo. See attached mock-up. Location: Public sidewalk. Number: 7 racks for 14 bicycles
- 2) Bicycle Corral: Conversion of one downtown vehicle parking space to a bicycle parking corral. Location: SE Arista Dr. north of SE Oak Grove Blvd. Number: 1 corral for 12 bicycles
- 3) Inverted U Racks: Standard inverted U racks with potential to include custom design features. Locations: Oak Grove United Methodist Church and New Urban High School. Number: 3 racks for 6 bicycles at the church and 6 racks for 12 bicycles at the school.

In order to accommodate program growth and replace damaged or vandalized racks, extra racks will be ordered.

Project Goals and Expected Outcomes

- Increase bicycle trips in Oak Grove neighborhood and adjacent communities by providing needed trip-end facilities.
- Provide active transportation supportive infrastructure to a low income, historically underserved community.



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 934636

- Reduce vehicle trips by removing vehicle parking and adding bicycle parking.
- Encourage people to choose the travel option of biking by “legitimizing” biking by making it more visible.
- Encourage residents to access downtown Oak Grove by bicycle instead of motorized vehicle by providing bike parking at significant destinations.
- Increase use of the Trolley Trail by adding custom, highly visible bicycle parking to Oak Grove.
- Provide a wayfinding element and confirmation to cyclists and pedestrians that they “are still on route” by installing Trolley Trail-themed racks.

Evaluation Plan

The Oak Grove Bicycle Parking Project will be evaluated using surveys distributed to businesses and organizations receiving racks, and a survey by County DTD staff conducted during the Trolley Trail Fest held annually in August. Businesses will be surveyed before and after rack installation. County staff has met and discussed the planned survey with HDOG and impacted businesses. Organizations participating in the survey are expected to include, but are not limited to, Vinyl Tap Bar and Grill, Buy Rite Grocery, Hair Designs, New Urban High School and Oak Grove United Methodist Church. Surveys at the annual Trolley Trail Fest will also be conducted before and after implementation of the project – summer of 2019 (the “before”) and summer of 2020 (the “after”).

Project Area

The project area includes “the heart” of downtown Oak Grove at the SE Arista Dr. and SE Oak Grove Blvd. intersection and extends east to S.E. Rupert Ave., west to SE River Rd. and north to SE Maple St. See Map 2 for project extent. Downtown Oak Grove is home to restaurants, a coffee shop, a small grocery retailer, beauty salon, New Urban High School, Oak Grove United Methodist Church, and other businesses and institutions. The Trolley Trail multi-use path passes through Oak Grove on SE Arista Dr. The six-mile long Trolley Trail is separated from automobile traffic except for the 0.7 mile SE Arista Rd. stretch through Oak Grove between SE Courtney Road and SE Creighton Rd.

Project Staff

The primary project team members and percent of time they will work on this project are listed below. In addition to the primary project staff, the project manager will enlist as needed the support of other staff members who have relevant expertise or experience. The Department of Transportation and Development (DTD) and North Clackamas Parks and Recreation staff will provide on-going project support from non-grant



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 934636

sources. North Clackamas Parks and Recreation will provide assistance with the installation of the Trolley Trail theme racks. In addition, DTD staff have established partnerships with community organizations that will contribute volunteer hours for permitting and plan development. The Pedestrian/Bikeway Advisory Committee will assist with obtaining the necessary right-of-way permits and the Historic Downtown Oak Grove will assist in final site selection and conducting surveys at the 2019 Trolley Trail Fest.

Staff Name	Title	Project Role	Experience (yrs)	% of Time
Scott Hoelscher	Senior Planer – Multimodal Transportation	Project Manager	15	10-20%
Brett Setterfield	Planner II	Project Co-Manager. PBAC volunteer coordinator; before and after survey deployment	3	10-15%
Mallorie McDowell	Engineering Technician	Project Assistant. ROW permit lead; MUTCD and ADA compliance; assist with before and after surveys.	14	8-10%

Task 1: Assemble Project Management Team and Project Start-Up

The project management team (PMT) will consist of one person each from the County Clackamas Department of Transportation and Development (DTD) Transportation Planning Division; DTD – Traffic Safety Division; North Clackamas Parks and Recreation, and a citizen volunteer from Historic Downtown Oak Grove (HDOG). The PMT will be involved with ongoing management throughout the duration of the project. There will be one PMT kick-off meeting to review project goals, scope of work, timeline and schedule.

Deliverables

- PMT roster and kick-off meeting minutes
- Project schedule



Exhibit A – Scope of Work

Metro Grant 934636

Task 2: Before Conditions - Trolley Trail Fest Survey

The PMT will develop a “before” survey and distribute it through the Historic Downtown Oak Grove website and other channels. The survey will establish a “before” condition of user perceptions of bicycle parking conditions and help verify location and amount of bicycle parking needed. DTD staff will also distribute the before survey at Trolley Trail Fest, an annual community festival held in August in downtown Oak Grove. Clackamas County Transportation will staff a table with the North Clackamas Parks and Recreation District to provide parks and active transportation information and distribute the survey with questions regarding improvements needed to enhance bicycle access to destinations and bike parking needs. Local businesses will also be surveyed about bicycle parking demand, preferences and needs. The survey will gauge community needs and attitudes toward supportive active transportation infrastructure and help identify issues and concerns among respondents to inform the rack installation and design.

Deliverables

- Survey instrument (“before” conditions) with input from RTO staff. Distributed and promoted broadly, including on the HDOG website, with local businesses and at the Trolley Trail Fest
- Completed survey forms

Task 3: Research Bike Parking Best Practices

The variety and types of bike parking available continues to evolve. If improperly placed or designed, bike parking may go unused or create a hazard to pedestrians. County staff will research bicycle parking best practices and develop a set of criteria and requirements to guide installation. Considerations may include, but are not limited to, sidewalk width requirements, dimensional standards such as distance from curb, American with Disabilities Act (ADA) requirements, and pros and cons of different rack styles. Local right-of-way permit requirements for rack installation will also be researched.

Deliverables

- Criteria for rack placement in public right-of-way
- Pros and cons list of different rack styles
- Memo detailing local right-of-way permit requirements



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 934636

Task 4: Preliminary Bicycle Parking Plan

This task will involve creating a preliminary bike parking plan for Oak Grove including the design (color, style and custom elements), map showing rack locations, quantity of racks and parking type. The bicycle parking is anticipated to include a combination of custom-designed Trolley Trail hoop racks, standard inverted-U racks without the Trolley Trail logo and one on-street bike corral. A field investigation and downtown walking tour with HDOG and other stakeholders, including Friends of the Trolley Trail and business/property owners, will be conducted to inform the preliminary Bicycle Parking Plan. Reference materials to inform the plan shall include, but are not limited to, the Manual on Uniform Control Devices (MUTCD), City of Portland’s Association of Pedestrian and Bicycle Professional *Essentials of Bike Parking*; City of Portland’s Bicycle Corral Webpage and Westside Transportation *Alliance’s Reimagine Suburban Bike Parking*.

Deliverables

- Preliminary Oak Grove Bicycle Parking Plan, including map showing type and location of bike parking location

Task 5: Neighborhood Meeting

County staff will attend a Historic Downtown Oak Grove (HDOG) monthly meeting to present the Preliminary Bicycle Parking Plan, and to collaborate and obtain feedback on the plan. DTD staff will assist in outreach to stakeholders to ensure interested parties are informed and have the opportunity to participate. The county will provide HDOG and community members attending the meeting a copy of the plan and allow time following the meeting for comments to be submitted.

Deliverables

- HDOG Meeting Minutes

Task 6: Final Oak Grove Bicycle Parking Plan

Based on community input at the HDOG neighborhood meeting, a final Oak Grove Bicycle Parking Plan will be developed.

Deliverables

- Final Bicycle Parking Plan

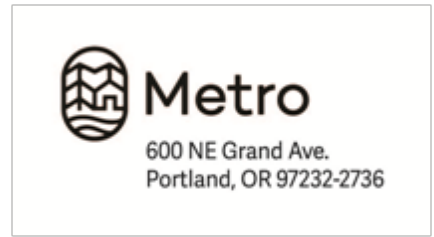


Exhibit A – Scope of Work

Metro Grant 934636

Task 7: Bicycle Rack Purchase and Installation

In accordance with the Final Bicycle Parking Plan, bicycle racks will be purchased from a reputable bicycle rack manufacturer. Metro and Clackamas County procurement procedures will be followed. Final bicycle rack locations will be field-verified and site plan drawings will be prepared. The Pedestrian/Bikeway Advisory Committee will assist in obtaining the necessary right-of-way permits. The North Clackamas Parks and Recreation District maintains the Trolley Trail and will contribute to the project by installing the racks with the custom Trolley Trail logo. Installation of the street bike parking corral and the other sites will be contracted. Best practices for installation and ADA clearance will be followed.

- Receipt for bicycle racks
- Photo essay of installed bike racks

Task 8: Conduct After survey

An “after” survey will be conducted to measure the effectiveness of the program. Methodology will consist of surveys of businesses that receive racks and intercept surveys of bike parking users. The survey will include questions to gauge program effectiveness. It will document what recipients hoped for from the bike parking and what they have experienced since the installation was completed. Businesses at the bike corral location will also be surveyed. A draft sample survey is attached.

Deliverables

- Survey instrument, modified as needed, with input from RTO staff
- Distribute survey forms (distributed and promoted in manner consistent with the “before” survey)

Task 9: Evaluation and Final Report

A final report will summarize the findings of the before and after surveys, details on installed bike parking and lessons learned.

Deliverables

- Final Report



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

Exhibit A – Scope of Work

Metro Grant 934636

Budget

Bike Racks/Bike Corral	\$ 6,191.00
Freight	\$ 835.00
Installation	\$ 1,350.00
Permits	\$ 665.00
Staff	<u>\$ 1,035.00</u> Minimum
Total Budget	\$10,076.00

Additional Staff hours beyond the minimum match requirement will be included in the project.

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

(1) FTA GRANT funds to be dispersed to Grantee not to exceed **(\$9,041.00)**

The amount the Grantee is required to spend to match Metro's grant:

(2) Grantee's non federal local match (10.27%) of **(\$1,035.00)**.

Grantee's invoices shall include:

- Metro Grant number **(936289)**
- Grantee name
- remittance address
- invoice date
- invoice number
- invoice amount
- Local Match amount
- itemized statement of work performed and expenses incurred during the invoice period
- **Required** to be submitted quarterly and uploaded into ZoomGrants

Exhibit B

Partnership Requirements



All grantees, including all project or program team members, engage in a partnership with Metro, RTO staff and other RTO program partners. Partnership multiplies the benefits of an RTO grant by applying current strategies and brands while incorporating lessons learned. The purpose of partnership requirements are to set up partners for success in their grant projects. These requirements help partners produce solid evidence of the efficient and effective use of their regional funds. RTO is available to support partners by providing tools and guidance to achieve a successful grant project starting at project planning and even after the grant cycle is completed. Grantees must consider the Partnership Requirements during the planning, measurement, and reporting of their grants and include steps during these processes to complete the requirements where appropriate. Partners are responsible for communicating these requirements to appropriate staff members. Partnership requirements apply to anything included in the grant agreement or made possible by the grant agreement. Exceptions to the requirements can be requested by emailing RTO staff and if agreeable, may be granted with confirmation provided in writing by RTO staff.

Instructions: Read and initial

Applying Strategies and Collaborating with RTO Partners

Grantee will review the 2018 RTO Strategy and the RTO Marketing Strategy and use messages, approaches, and techniques with applicable audiences. Grantee will participate in the RTO Collaborative Marketing Group and RTO Basecamp, including attending bi-monthly meetings, sharing successful projects, and implementing regional marketing campaigns when applicable. Resources can be found online at oregonmetro.gov/collaborativemarketing. Basecamp invites are sent after grants are awarded. If the grant is focused on commute options, grantee will coordinate frequently with employer outreach partners affected by this project scope or located in the project geographic area to exchange existing tools, campaigns, and support ECO surveys.

Project Materials

Grantee will attribute credit to the Federal Transit Administration and Metro on all project materials, such as reports, booklets, brochures, web pages, and social media posts. Attribution on materials must read "Made possible with support from Metro and the Federal Transit Administration." If marketing is done with audio only, spoken attribution language must be "This project is made possible by a partnership with Metro, with support by the Federal Transit Administration."

Grantee will include the Metro logo on all print ads, banners, flyers, posters, signage, and videos. Grantee will include the Metro logo on all marketing and advertising materials, both print and online (size permitting). Grantees will seek Metro approval through the grant manager of any materials where the Metro logo is included to ensure proper logo design and placement. Metro logos and usage guidelines can be found in the RTO Basecamp.

For non-commercial promotional photo needs, grantee will browse the existing RTO Flickr account, linked on the RTO Basecamp. Grantee will refer to each photo's guidance for determining attribution and any use restrictions. Grantee will share project photos, flyers, and any other items that have potential value to partners to the RTO Basecamp.

For wayfinding signage, grantee will apply the Intertwine design guidelines, linked on the RTO Basecamp. For web-based resources needed for biking and walking info, grantee will include a link to Getting Around (oregonmetro.gov/gettingaround).

Exhibit B

Partnership Requirements



Events and Media

Grantee will inform an RTO staff member of any event needs 90 days in advance. Grantee will mention support provided by Metro and the Federal Transit Administration in press releases and social media. Grantee will contact RTO staff as soon as possible if a reporter or media outlet inquires about efforts related to this grant project in order to consider partnership highlights. Grantee will contact RTO staff as soon as possible for any events or ceremonies in order to discuss if a Metro official should attend an event.

Measurement and Evaluation

Grantee will communicate, monitor and track progress, demonstrate impact, document lessons learned, and be accountable and transparent to Metro, partners and the benefiting communities. Grantee will review the Multiple Accounts Evaluation (MAE) framework at the beginning of the grant cycle, prioritize measurement efforts, collect qualitative and quantitative project data, and incorporate it into the tasks and deliverables throughout the grant cycle.

Grantee will utilize qualitative data. The purpose of qualitative data is to help illustrate the impact of a project (the how and why), based on background information, descriptive text, and visuals. Stakeholder engagement can be a vital part of the qualitative process. We encourage grantees to engage with stakeholders, seek advice from RTO, and use resources from the RTO Basecamp.

Grantee will utilize quantitative data. The purpose of quantitative data is to help illustrate the impact of a project based on comparable values. Grantee will use tools available on the RTO Basecamp when calculating vehicle miles reduced, emissions reduced, gas savings or other numeric MAE metrics to ensure consistent methods. If collecting automated data (for example, bike/ped counters), grantee will add the data to the PSU Bike-Ped Data Archive, linked on the RTO Basecamp. If the project includes conducting a survey, grantee will contact RTO staff for assistance and provide a draft to RTO staff. Grantee will meet with RTO staff for a yearly check-in. The grantee shall update RTO staff with details confirming that the groundwork is set for this grant project to deliver measured results.

Use of ZoomGrants

Grantee will keep the application ownership up-to-date with staff turnover and coordinate with RTO staff to update the application in the event of a grant amendment. Grantee will use help.zoomgrants.com for troubleshooting before emailing RTO staff for assistance. Grantee will maintain the ZoomGrants application throughout the grant cycle to ensure reports and invoices are completed on time and accurately through the ZoomGrants platform.

Grantee will thoroughly, consistently, and accurately complete and submit quarterly reports by the required due date via ZoomGrants. If reports will be late, grantee will contact RTO staff to discuss an extension. Reminder emails are sent 14 days before the due date, and each week if a report is late. Quarterly invoices cannot be paid until quarterly reports are up-to-date. Grantee will submit a final grant report, summarizing the grant activity for the entire cycle, via ZoomGrants by the date set forth in the grant agreement. The final report will be consistent with the initial grant application as well as the outcomes and deliverables in the Scope of Work. Once the final report is submitted, the final invoice in ZoomGrants will be processed.

____ Initials

Exhibit C - Federal Clauses

The Grantee agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2018 FTA Master Agreement [FTA MA 25]**, or most recent, including, but not limited to, the following:

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

For purposes of this Master Agreement:

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

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

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

(a) Federal guidance such as a:

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

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

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

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

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

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

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

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

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

Exhibit C - Federal Clauses

B. No Federal Government Obligations to Third Parties.

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

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

- (2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have obligation or liability to any:
 - (a) Third Party Participant, or
 - (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

[FTA Master Agreement, §2.f]

C. False or Fraudulent Statements or Claims.

- (1) Civil Fraud. The Recipient acknowledges and agrees that:
 - (a) Federal law and regulations apply to itself and its Project, including:
 - (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and
 - (2) U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31,
 - (b) By executing the Underlying Agreement, the Recipient certifies and affirms the:
 - (1) Truthfulness and accuracy of any
 - (a) Claim,
 - (b) Statement,
 - (c) Submission,
 - (d) Certification,
 - (e) Assurance, or
 - (f) Representation, and
 - (2) For which the Recipient has made, makes, or will make to the Federal Government, and
 - (c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient:
 - (1) Presents, submits, or makes available any information in connection with any:

Exhibit C - Federal Clauses

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

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

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

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

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

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

[FTA Master Agreement §3.f]

D. Procurement.

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

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

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

[FTA Master Agreement §17(u)]

E. Project Implementation.

Changes to Federal Requirements and Guidance.

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

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

b. Apply to the Recipient or its Project,

[FTA Master Agreement, §2.d (1)]

Exhibit C - Federal Clauses

F. Civil Rights.

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

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

- (1) prohibit discrimination based on:
 - (a) race,
 - (b) color, or
 - (c) national origin
- (2) Comply with:
 - (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
 - (b) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. Part 21 and
 - (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the previous section 13.a of this Master Agreement, and
- (3) Except as FTA determines otherwise in writing, follow
 - (a) The most recent edition of FTA Circular 4702.1A, “Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable Federal laws, regulations, and guidance.
 - (b) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964, 28 C.F.R. § 50.3, and
 - (c) other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity.

- (1) Federal Requirements and Directives. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:
 - (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
 - (b) Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note,
 - (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13.a of this Master Agreement, and,
 - (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

Exhibit C - Federal Clauses

(2) General. Recipient agrees to

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

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

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

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

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

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

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

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

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

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

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

Exhibit C - Federal Clauses

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

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

(1) Federal laws, including:

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

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

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

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

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

(2) The following Federal regulations including:

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

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

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

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

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

Exhibit C - Federal Clauses

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

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

G. Private Enterprise.

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

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

H. Right of the Federal Government to Terminate.

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

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

b. Financial Implications.

- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled, and
- (2) The Federal Government may:

Exhibit C - Federal Clauses

(a) Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:

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

(b) Require the Recipient to refund

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

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

[FTA Master Agreement §12]

DRAFT

Approval of Previous Business Meeting Minutes:

August 15, 2019

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

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

Thursday, August 15, 2019 - 10:00 AM

Clackamas County Fairgrounds

694 NE 4th Ave., Canby, OR 97013

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



CALL TO ORDER

- Roll Call
- Pledge of Allegiance

The Color Guards for today - VFW 1324

Chair Bernard announced the Board will recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item, he introduced Housing Authority Commissioner Paul Reynolds.

I. HOUSING AUTHORITY CONSENT AGENDA

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

MOTION:

Commissioner Reynolds: I move we approve the Housing Authority consent agenda.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Reynolds: Aye.

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Fischer: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 6-0.

1. Approval to execute a contract between Housing Authority of Clackamas County and A-1 Quality Construction for on-demand removal and replacement of flooring in Public Housing Units
2. Approval to Apply for Additional Mainstream Vouchers Providing Rental Assistance to Non-Elderly Disabled Families through the Notice of Funding Availability
3. Approval to Apply for a Grant for 25 New Limited Term Vouchers for Foster Youth to Independence Rental Assistance Program
4. Resolution No. 1939 Authorizing the Execution, Acknowledgement and Delivery of Transaction Documents for the Hillside Manor Rehabilitation Project
5. Approval of an Easement for the City of Milwaukie Allowing the Installation of a Storm Water Pipe on the Hillside Public Housing Property
6. Resolution No. 1940 Authorizing the Housing Authority to Submit the Section 8 Management Assessment Program (SEMAP) Certification to US Department of Housing and Urban Development

Chair Bernard announced the Board would adjourn as the Housing Authority Board and Reconvene as the Board of County Commissioners for the remainder of the meeting.

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

1. Drive to Zero Pledge
Joe Marek and Rob Sodowsky, Dept. of Transportation & Development presented the staff report.
2. Welcome to the Fair from Laurie Bothwell, Executive Director welcomed the Board to the 2019 Clackamas County Fair.
3. Update on the New Extension Service Building
Mike Bondi, Oregon State University Extension Service gave an update on the new Extension Building.
4. 4-H Presentations
Wendy Hein, 4-H Coordinator introduced several 4-H members who showcased their 4-H projects including animals, some spoke about the importance of the 4-H program.

III. CITIZEN COMMUNICATION

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

1. Carl Exner, Sandy – spoke in support of 4H programs and the importance of low income housing in Sandy.

~Board Discussion~

IV. CONSENT AGENDA

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

~Board Discussion~

MOTION:

- Commissioner Humberston: I move we approve the consent agenda.
Commissioner Fischer: Second.
all those in favor/opposed:
Commissioner Humberston: Aye.
Commissioner Fischer: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

A. Health, Housing & Human Services

1. Approval of a Sub-recipient Agreement with Northwest Family Services and Community Development Division for Emergency Solutions Grant (ESG) Funding for the Casa Esperanza Homeless Shelter – *Community Development*
2. Approval of a Sub-recipient Agreement with Clackamas Women’s Services and Community Development Division for Emergency Solutions Grant (ESG) Funding for the CWS Homeless Shelter – *Community Development*
3. Approval of Amendment No. 1 of the Grant Agreement with Northwest Family Services for Culturally Specific Domestic Violence Shelter and Services – *Children, Families & Community Connections*
4. Approval of a Professional Services Contract between Clackamas County and Ankrom Moisan Associated Architect, Inc. for the Sandy Health Clinic Project – *Health Centers*
5. Approval of an Intergovernmental Agreement with the State of Oregon, Housing and Community Services Department to Administer Community Resource Division Funds – *Social Services*

B. Department of Transportation & Development

1. **Board Order No. 2019-82** Adopting the Vacation of a Portion of a 20 Foot Wide Alley in Carver
2. Granting an Easement to Portland General Electric for the Installation of Reader Board at the Entrance of the Aquatic Center on Harmony Road
3. Approval of Accela Replacement Renewal Order Form and Relinquishment - *Procurement*

C. Elected Officials

1. Approval for the District Attorney's office to Apply for the 2019-2021 Victims of Crime Act & Criminal Fine Account Non-Competitive Program Grant for Prosecution Based Victim Program Grant – *District Attorney*

D. Public & Government Affairs

1. Approval of an Intergovernmental Agreement with the City of Milwaukie Regarding payment for Services Related to the Willamette Falls Locks State Commission

E. Business & Community Services

1. Approval of a Wood Innovation Grant Award with the US Forest Service to Support Incorporation of Mass Timber for the County Courthouse Project
2. Approval of the 1st Amendment to the Willamette Falls Legacy Project Rediscover the Falls Grant Agreement by Metro, the City of Oregon City and Rediscover the Falls
3. Approval of an Infrastructure and Additional Shared Cost Funding Agreement with the Clackamas Workforce Partnership for Fiscal Year 2019-2020

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of a Public Improvement Contract between the North Clackamas Parks & Recreation District and T.F.T. Construction, Inc. for the North Clackamas Aquatic Park Parking Lot Paving Project - *Procurement*

VI. SERVICE DISTRICT NO. 5

1. **Board Order No. 2019-83** Certifying the 2019-2020 Assessment Roll for Clackamas County Service District No.5

VII. COUNTY ADMINISTRATOR UPDATE

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

VIII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 11:08 AM

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



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

October 3, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Service Level Agreement Amendment #5 between
Clackamas Broadband eXchange and LS Networks

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for amendment #5 of a Service Level Agreement (SLA) with LS Networks (LSN) for an additional dark fiber connection to Mulino Rd in Canby.
Dollar Amount and Fiscal Impact	LSN will pay a non-recurring fee of \$1,500.00 for the new fiber construction and a recurring annual fee of \$7,488.00.
Funding Source	The funding source for the expansion of the CBX fiber network will be contributed from the CBX budget and then reimbursed by LSN.
Duration	Effective upon signature by the board and the SLA is effective for three (3) years.
Previous Board Action	Board previously approved CBX to build and maintain a dark fiber network for LSN.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is proposing to complete a new fiber connection for LS Networks. LS Networks requested an additional connection to provide connectivity for one of their customers.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new fiber connection with LS Networks. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Service Level Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings
CIO Technology Services

APPENDIX A**SERVICE AND RATE SCHEDULE****1. Specified Services and Rates**

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Semi-Annual Recurring Charges

From (Connecting Point A:Site Name & Address)	To (Connecting Point B:Site Name & Address)	Service	Monthly Rate (\$)
1 Rural Ring	Connecting in at: 1) Adjacent to PGE pole #556 splice case near Colton 2) Adjacent to PGE pole #431 slack loop near Molalla	One Pair (two) dark fibers	\$1,250.00
2 Tri-City Water Control Plant 15941 Agnes Ave Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Two Pair (four) dark fibers	\$590.00
3 Clackamas County Vault located in front of 15 82 nd Dr Gladstone, OR 97027	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	One dark fiber	\$255.00
4 Clackamas County Aerial	Clackamas County Vault	One dark fiber	

	splice case at Molalla Ave & Beaver creek Way Oregon City, OR 97045	Adjacent to PGE pole #431 Oregon City, OR 97045		\$255.00
5	Clackamas County Juvenile Building 2121 Kaen Rd Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	One Pair (two) dark fibers	\$255.00
6	Clackamas County Circuit Court 807 Main St Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	One Pair (two) dark fibers	\$255.00
7	2525 SE 1st St Canby, OR 97013	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	One Pair (two) dark fibers	\$624.00

5. Nonrecurring Charges

From (Connecting Point A: Site Name & Address)		To (Connecting Point B: Site Name & Address)	Service	Amount (\$)
1	Rural Ring	Connecting in at: 1) Adjacent to PGE pole #556 splice case near Colton 2) Adjacent to PGE pole #431 slack loop near Molalla	Construction	existing
2	Tri-City Water Control Plant 15941 Agnes Ave Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Construction	existing
3	Clackamas County Vault located in front of 15 82 nd Dr Gladstone, OR 97027	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Construction	existing
4	Clackamas County Aerial splice case at Molalla Ave & Beaver creek Way Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Construction	existing
5	Clackamas County Juvenile Building 2121 Kaen Rd Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Construction	existing
6	Clackamas County Circuit Court 807 Main St Oregon City, OR 97045	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Construction	existing
7	2525 SE 1st St Canby, OR 97013	Clackamas County Vault Adjacent to PGE pole #431 Oregon City, OR 97045	Construction	\$1,500.00

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, or the highest rate allowable in accordance with applicable law, whichever is less, on any

installment not paid when due.

7. Annual Consumer Price Index (CPI) Adjustments

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

Remainder of this page intentionally left blank.



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Personal Services Contract with Lower Columbia Estuary Partnership to provide Watershed Health Education Support Services

Purpose/ Outcomes	Execution of the contract between Water Environment Services and Lower Columbia Estuary Partnership for the Watershed Health Education Support Services.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$360,000.00, including two (2), two (2) year optional renewals.
Funding Source	WES Surface Water Operating fund from approved FY 19/20 budget. No County General Funds. 641-01-50820-431350
Duration	June 30, 2021
Previous Board Action	N/A
Strategic Plan Alignment	Supports the following key result for Watershed Protection: 50% of WES' streams are healthy. Supports the following goal for the County's Performance Clackamas goals: Honor, utilize, promote and invest in our natural resources.
Counsel Review	September 18, 2019
Contact Person	Gail Shaloum, 503-742-4597

BACKGROUND:

WES' Watershed Health Education Program is intended to instruct and motivate people to take action in their daily lives to reduce human impacts on our water resources. Permits also require WES to conduct education programs to protect water quality for public health and the environment. The Lower Columbia Estuary Partnership's educational programming is designed to provide students with opportunities to acquire the knowledge, values, attitudes, commitment, and skills needed to protect and improve water resources; improve students' knowledge of watershed science and improve environmental literacy; and inspire teachers, students, and school communities to take actions that protect watershed health. Programming will include classroom instruction and hand-on learning opportunities outdoors. Contract includes measuring changes in student knowledge and intent to change behaviors before and after program participation.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on July 22, 2019. Proposals were opened on August 13, 2019, one (1) proposal was received: Lower Columbia Estuary Partnership. After review of the proposal and all necessary documentation, Lower Columbia Estuary Partnership, was determined to be the successful proposer.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Lower Columbia Estuary Partnership for the Watershed Health Education Support services for a total contract amount not to exceed \$360,000.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the Agenda of **October 3, 2019** by the Procurement Division



**WATER ENVIRONMENT SERVICES
PERSONAL SERVICES CONTRACT
Contract #1843**

This Personal Services Contract (this "Contract") is entered into between **Lower Columbia Estuary Partnership** ("Contractor"), and Water Environment Services, a political subdivision of the State of Oregon ("District").

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2021**, with the option for two (2) two (2) year renewal. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 2. Scope of Work.** Contractor shall provide the following personal services: provide watershed health education support. ("Work"), further described in **Exhibit A**.
- 3. Consideration.** The District agrees to pay Contractor, from available and authorized funds, an annual sum not to exceed **sixty thousand dollars (\$60,000.00)**, for a total contract values not to exceed **Three Hundred Sixty Thousand dollars (\$360,000.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit D If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit D.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Gail Shaloum.

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

7. Contractor and District Contacts.

Contractor	District
Administrator: Debrah Marriott Phone: 503-226-1565 Email: dmarriott@estuarypartnership.org	Administrator: Gail Shaloum Phone: 503-742-4597 Email: GShaloum@clackamas.us

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

ARTICLE II.

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

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

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

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

Abuse and Molestation Insurance as part of the Commercial General Liability policy in a form and with coverage that are satisfactory to the County covering damages arising out of actual or

threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to District, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during District's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, District shall have no rights in any pre-existing Contractor intellectual property provided to District by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for District use only. If this Contract is terminated prior to completion, and the District is not in default, District, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional

standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the District's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District, which shall be granted or denied in the District's sole discretion. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the District for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the District fails to receive funding, appropriations, or other expenditure authority as solely determined by the District. Upon receipt of written notice of termination from the District, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, District may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the District due to a breach by the Contractor, then the District shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the District, less any setoff to which the District is entitled.

- 21. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by events outside the District or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
 - f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling District to terminate this Contract for cause.
 - g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. CRIMINAL BACKGROUND CHECK REQUIREMENTS.** Contractor shall be required to have criminal background checks (and in certain instances fingerprint background checks) performed on all employees, agents, or subcontractors that perform services under this Contract. Only those employees, agents, or subcontractors that have met the acceptability standards of the District may

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

Contractor shall complete work as outlined in the request for Proposal # 2019-66 Watershed Health Education Support issued July 22, 2019, hereby included as **Exhibit B**, and the Vendor's response hereby included as **Exhibit C**.

EXHIBIT B
RFP# 2019-66
WATERSHED HEALTH EDUCATION SUPPORT
Issued July 22, 2019

EXHIBIT C
VENDOR'S PROPOSAL

**EXHIBIT D
FEE SCHEDULE**