

# AGENDA

**Thursday, January 30, 2020 - 6:00 PM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2020-06

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**I. 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.)*

**II. PUBLIC DISCUSSION ITEM** *(The following items will be individually presented by County staff or other appropriate individuals. Citizens wishing to comment on a discussion item must fill out a blue card provided on the table outside of the hearing room prior to the beginning of the meeting.)*

**Board of County Commissioners**

1. Resolution No. \_\_\_\_\_ Affirming Clackamas County's Support of Pollinators  
(Commissioner Martha Schrader)

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

1. First Reading of Ordinance No. \_\_\_\_\_ Adding Clackamas County Code Chapter 8.10, Short-Term Rentals to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, Compliance Hearings Officer (Nate Boderman, County Counsel)

**IV. CONSENT AGENDA** *(The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in 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 Lease **Agreement No. 9568** between Clackamas County Health Centers Division and Genoa Healthcare, LLC for Rental of Clinical Space – *Health Centers*
2. Approval of Lease **Agreement No. 9570** between Clackamas County Health Centers Division and Genoa Healthcare, LLC for Rental of Clinical Space – *Health Centers*

**B. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of the 2019-2020 Victims of Crime Act and Criminal Fine Account Non-Competitive Program Grant for the District Attorney's Office – *District Attorney*

**C. Technology Services**

1. Approval of a Service Level Agreement between Clackamas Broadband eXchange and West Linn-Wilsonville School District to Renew Existing Dark Fiber Connections
2. Approval of a Service Level Agreement between Clackamas Broadband eXchange and Estacada School District to Renew Existing Dark Fiber Connection

**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>**



January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Resolution and Discussion**  
**Affirming Clackamas County's Support of Pollinators**

<b>Purpose/Outcome</b>	Formal adoption of Resolution Affirming the Clackamas County's Support of Pollinators and their importance. Guest speakers: Carol Yamada, Stafford Hamlet resident; and Andony Melathopoulos, Pollinator Health Extension Specialist at Oregon State University
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Duration</b>	Ongoing
<b>Previous Board Action/Review</b>	Discussed at Issues on September. 4, 2019 and January 21, 2020
<b>Counsel Review</b>	Yes, this item has been reviewed by County Counsel
<b>Strategic Plan Alignment</b>	Honor, utilize, promote and invest in our natural resources
<b>Contact Person</b>	Tracy Moreland 503-742-5974 or Dylan Blaylock 503-742-5917

Clackamas County Commissioner Martha Schrader has been the lead on this effort and asked for a formal resolution detailing the imperative role pollinators play in the health of County forests and animal habitat, as well as agriculture and other industries.

**RECOMMENDATION**

Staff respectfully recommends the Board adopts the Resolution Affirming Clackamas Clackamas County's Support of Pollinators.

Sincerely,

Gary Schmidt  
Clackamas County Administrator

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

In the Matter of Affirming  
Clackamas County's Support of  
Pollinators



Resolution No. \_\_\_\_\_

*Page 1 of 2*

**Whereas**, pollinators include animals such as bees and other insects, birds and bats that transfer pollen from flower to flower resulting in the fertilization and subsequent seed and fruit production for plants; and

**Whereas**, pollinators play a vital role in the health of our forests and grasslands, which provide forage, fish and wildlife habitat, timber, water, mineral resources, and recreational opportunities as well as enhanced economic development and tourism opportunities for communities; and

**Whereas**, three-fourths of the earth's flowering plants and 35% of the world's food crops depend on animal pollination to reproduce, and over 150 food crops in the United States depend on pollinators, including nearly all fruit and grain crops; and

**Whereas**, the Food and Agriculture Organization of the United Nations has reported that between \$235 billion and \$577 billion worth of annual global food production relies on direct contributions by pollinators; and

**Whereas**, the agricultural industry in Clackamas County is a critical part of our local economy, and together with the nurseries, greenhouses and food production industries, generates a localized gross product of more than \$277 million; and

**Whereas**, the world is facing a climate change crisis brought on by the rise of carbon dioxide levels, and Clackamas County is developing a Climate Action Plan that will state our intended actions to reduce our carbon footprint; and

**Whereas**, populations of important pollinators including bees are declining at alarming levels, and climate change and habitat loss are contributing to pollinators' increasing vulnerability; and

**Whereas**, Clackamas County has a strategic priority to honor, utilize, promote and invest in our natural resources.

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

In the Matter of Affirming  
Clackamas County's Support of  
Pollinators



Resolution No. \_\_\_\_\_

*Page 2 of 2*

**NOW THEREFORE, the Clackamas County Board of County  
Commissioners resolves as follows:**

1. Where and whenever appropriate, Clackamas County will take steps to install and maintain pollinator gardens and pursue other actions on its lands and infrastructure to improve these animals' ability to survive, flourish and thrive.
2. Where and whenever appropriate, Clackamas County will take steps to install, promote and maintain the use of mason bee boxes and other similar items, and natural features, that promote healthy pollinator activity and habitat.
3. County departments will adopt integrated measures within their operating policies and practices to better reflect the absolute importance of pollinators, and to minimize the impact of any actions that could hurt pollinator populations.
4. The county will promote to our community the importance of pollinators and the actions that Clackamas County is taking to help them thrive, as well as actions our residents and stakeholders can take to do the same.
5. The county's forthcoming Climate Action Plan will include adaptation actions and best practices that can help pollinators in our community continue to persist, with further recommended actions on how our body can help them.
6. The county and its departments will annually recognize and promote National Pollinator Week and other related celebrations as appropriate.

**DATED** this \_\_\_ day of January, 2020

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary



**OFFICE OF COUNTY COUNSEL**

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

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
Assistants

January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**First Reading of Ordinance No. \_\_\_\_\_, Adding Clackamas County Code Chapter 8.10, *Short-Term Rentals* to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, *Compliance Hearings Officer***

<b>Purpose/Outcomes</b>	<i>To add a new section to County Code implementing regulations related to short-term rentals, together with corresponding conforming amendments.</i>
<b>Dollar Amount and Fiscal Impact</b>	<i>Implementation of this program would require up to two additional full time employees (FTE), plus additional time for the code enforcement Hearing's Officer. Based on cost estimates from DTD and the Finance Department, the total cost to run the STR program annually will be approximately \$320,000.</i>
<b>Funding Source</b>	<i>Revenue generated from newly adopted registration fees, potential seed money from the Tourism and Cultural Affairs Department.</i>
<b>Duration</b>	<i>Indefinite.</i>
<b>Previous Board Action</b>	<i>Policy Sessions: March 13, 2019; June 11, 2019; August 6, 2019; September 25, 2019; October 22, 2019; and January 14, 2020.</i>
<b>Strategic Plan Alignment</b>	<i>Ensure safe, healthy and secure communities. Build public trust through good government.</i>
<b>Contact Person</b>	<i>Martha Fritzie- 503-742-4529; Nate Boderman – 503-655-8364</i>
<b>Contract No.</b>	<i>N/A</i>

**BACKGROUND:**

**What is a short-term rental (STR)?**

A short-term rental (STR), or vacation rental, is a dwelling unit, or portion of a dwelling unit, that is rented to any person or entity for a period of up to 30 consecutive nights. Operators/hosts may be owners, renters, or property management companies.

Short-term rentals are often advertised on websites such as Airbnb, HomeAway, VRBO, VacationRentals.com, or Booking.com.

### **Why are we doing this now?**

Currently, the County's Zoning & Development Ordinance (ZDO) does not clearly identify short-term rentals (STRs) as allowed in any homes in the county; and therefore, it is considered (from a zoning perspective) a prohibited use of a dwelling. However, there are clearly a number of homes in the County actively being used as short-term rentals and a growing interest among homeowners in pursuing this type of use legally in the county.

In addition, there have been several properties in the county operating as short-term rentals that have generated enough complaints that it has become apparent that this use can cause unwanted neighborhood impacts.

Finally, while there are a number of STRs that are currently paying the Transient Room Tax (similar to hotels, motels and other lodging establishments), there also appear to be a large number that are not, and establishing an STR registration program could help level the playing field for all lodging establishments, ensuring they are all paying their fair share.

All of these reasons led the Board of County Commissioners (BCC) to direct the Planning & Zoning Division to look into the most effective ways to potentially allow and regulate STRs.

### **Background**

Over the last 14 to 16 months, Staff from the Planning & Zoning Division have led the work effort that has culminated in the proposed STR registration program and regulations that are currently proposed for adoption into the County Code. This work included the following:

**1. Research:** In late 2018 – early 2019, Planning staff conducted research to understand if and how other jurisdictions in Oregon are allowing and regulating short-term rentals and, more importantly, what is and is not working well with their regulations. Based on feedback from these jurisdictions and a search of published studies on the matter, it became clear that there are a number of opportunities, as well as challenges with regulating STRs.

Opportunities with allowing and regulating short-term rentals:

- a) Provides an additional source of income for owners
- b) Provides unique vacation destinations and encourages tourism
- c) Regulates which properties can and cannot be used as STRs, maximizing retention of affordable housing
- d) Can generate tax revenue by properly taxing STRs
- e) Allows for the creation of a process for enforcing and revoking permits on problem properties
- f) Provides a lodging option in communities for which there is not any other traditional lodging available

Challenges with allowing and regulating short-term rentals:

- a) The variety of stakeholders do not always agree on how to regulate STRs; it can be a contentious process to establish rules
- b) Bad actors (public nuisances, noise, parking, trash, and "party" houses)
- c) Potential loss of neighborhood investment, loss of affordable housing
- d) Often hotel/transient tax is not paid
- e) Even with a legal path to allowing STRs, enforcement remains an issue for many jurisdictions. Strong enforcement regulations are a necessity.
  - “Neighbor enforcement” is a tactic used by some to give neighbors the ability to contact the rental operator directly with an issue before contacting the jurisdiction.
  - Some jurisdictions look to contract out enforcement work to companies such as STR Helper (a third-party service for tracking and enforcement).

**2. “Internal Stakeholder Group”:** Planning staff conducted several meetings with an “internal stakeholders group” which included representatives from Planning & Zoning; Code Enforcement; Building Codes; Tourism; Health, Housing & Human Services; the Housing Authority; Septic & Onsite Wastewater Program; County Counsel; DTD Administration; and Public & Government Affairs (representatives from Business & Community Services and the Sheriff’s Department were invited but unable to attend). The intent was to include the various departments/divisions that may be affected by the permitting of short-term rentals, or that may ultimately be involved in administering and enforcing the regulations.

This group was used extensively for feedback and input as drafts of proposed regulations for a short-term rental program were developed.

**3. BCC Policy/Planning Sessions:** On March 13, 2019; June 11, 2019; August 6, 2019; September 25, 2019; October 22, 2019; and January 14, 2020, County Staff and the BCC had policy/planning sessions about the topic of STRs. At these meetings, there were robust discussions around:

- The opportunities and challenges with allowing and regulating short-term rentals (STRs);
- What elements may be the most appropriate to regulate related to STRs, if the county is to move forward in that way;
- What Staff learned through the extensive public outreach efforts made in the spring of 2019 and December of 2020;
- Specific regulations for the use of a dwelling as an STR, including – garbage removal, maximum occupancy, parking, noise, building and fire safety, and other elements;
- Administration of the STR program through the Finance Department;
- Enforcement of other regulations that are not currently under the sheriff’s department purview (noise ordinance, illegal parking, etc.) by the County’s Code Enforcement staff;



- What potential impact that allowing and/or regulating STRs may have on neighborhoods and to the supply of housing, specifically affordable housing;
- Whether it may be appropriate to regulate different areas of the county differently – either through a registration “cap” or through a “primary residence” model (similar to Lake Oswego), understanding that both those methods may be difficult to administer and enforce; and
- Whether the county can afford a STR program given the program would require some start-up costs before the registration fees could result in “full cost recovery” for the program.

At the *March 13, 2019* policy session, staff discussed opportunities and challenges with allowing and regulating STR, as well as various methods to do so and types of regulations to include. At the end of this session, the BCC generally agreed to have Staff to continue to move forward with this project and to solicit feedback from the public. The BCC was clear that they wanted Staff to ask the public similar questions to those they had just discussed and specifically asked that Staff not take a draft proposal out to the public before hearing public feedback about the general concepts.

The BCC was also in general agreement that the most appropriate place for any regulations for short-term rentals is in the County Code, rather than in the Zoning & Development Ordinance (ZDO).

At the *June 11, 2019* policy session, Staff presented the results of the public outreach efforts conducted through a series of public meetings, project webpage (<https://www.clackamas.us/planning/str>) and social media postings, and a survey that was available both on-line and on paper copies available at each of the meetings. The single biggest takeaway from the public meetings and the survey was that the public appears to overwhelmingly support allowing short-term rentals in the county. While there was (and likely still is) significant disagreement about the level of regulation that may be appropriate for this use, the prevailing sentiment was strongly in favor of allowing the use.

At the *August 6, 2019* policy session, Staff presented a first draft of what a registration process and regulations could look like for a short-term rental program. This draft was based on both public feedback and feedback the BCC gave to Staff at prior policy sessions. The discussion was focused on specific regulations for the use and Staff committed to return to the BCC with a discussion of administration (including in which department the program would be housed) and enforcement of the regulations. Staff also committed to return to the BCC to have further discussions about the following issues that arose in this policy session: (1) The possibility of limiting STRs to something less than every dwelling – either through capping the total number of licenses allowed; capping the number of nights annually a STR can be rented out; or requiring an “owner-occupied” or “hosted” model in areas outside the Mt. Hood area; and (2) The potential impacts of STRs on affordable housing in the county.

At the *September 25, 2019* policy session, Staff presented a second draft of the proposed amendments to the County Code (Section 8.10, *Short-Term Rentals*) that included changes to specific regulation, based on the feedback from the BCC and several members of the public.

Staff also provided additional information and led a follow up discussion related to limiting the overall number of licenses allowed and the potential impacts of STRs on affordable housing, as well as:

- Administration of the program through the Finance Department, which is the department that currently administers the Transient Room Tax (TRT). As proposed, the Finance Department would process all STR registrations and be responsible for enforcement only as it relates to pursuing those owners who are operating without a registration; and
- Enforcement of other regulations that are not currently under the Sheriff's Department purview (noise ordinance, illegal parking, etc.) through the County's Code Enforcement Division. This Division has the expertise and knowledge of legally-required processes and procedures associated with the enforcement of violations to building, zoning and other county codes.

At the end of this session, the BCC remained concerned around the potential impacts of this use on neighborhoods and on housing supply, particularly in the urban area. The BCC acknowledged that the Mt. Hood area is the County's main tourist destination and the communities on Mt Hood already contain a relatively large number of STRs, many of which have been operating for several decades. As a result, the BCC wanted to continue the STR conversation to further discuss the concept of having different regulations in the urban area, versus the rural area, versus "the mountain".

At the *October 22, 2019* policy session, the BCC discussed the merits of creating different regulations for STRs in different areas of the county and ultimately directed Staff to move forward into a public comment period and then all necessary public hearings to proceed with the adoption process for allowing, regulating, and registering STRs. The BCC requested this draft include the proposed registration program and regulations for STRs in legal dwellings in unincorporated areas of the county, provided that if the property is within the Portland Metropolitan Urban Growth Boundary (UGB) then the property owner's primary residence must also be on the property, although the owner would not be required to be there when the short-term rental was occupied.

At the *January 14, 2020* policy session, Staff presented a third draft of the proposed STR registration program and regulations – the same draft that was provided to the public for comment during December and early January. Staff also presented the preliminary results of feedback received during the public comment period (recognizing that the results were not yet complete). Generally, feedback from the public has been mixed, and is discussed in more detail in the next section, and the BCC directed Staff to continue with the public hearings and adoption process, as planned.

Of note in this and several previous policy sessions was the continued discussion about the funding of the program. The BCC has made it clear, that the STR program must be a “full cost recovery” program – in other words, the fee associated with the registration of an STR needs to be sufficient to cover all the costs for administration and enforcement of the program.

**4. Public outreach:** While Staff has been available to answer questions and has collected all written comments submitted throughout the life of the project, there were two major organized public outreach efforts conducted for this project:

(1) In May/June of 2019, Planning Staff, with support from Public and Government Affairs (PGA) Staff presented the topic of STRs and led discussions at seven public meetings, hosted by Community Planning Organizations (CPOs), a Hamlet and the County. Staff provided information on the project website and on a flyer distributed at these meetings to provide initial information and help frame the discussion.

Because of the prevalence of vacation rentals in the Mt. Hood area and the fact that a large number of property owners in the Mt. Hood area are not residents of the area and may not be connected with the CPO, prior to the meeting hosted by the Rhododendron CPO, Staff mailed over 4,700 postcard notices, specifically inviting those owners to attend one of the seven planned public meetings.

Each of these public meetings was well-attended, with as many as 175 people attending the May 18<sup>th</sup> meeting in Welches. Comments were collected and summarized by Staff and a survey was made available to the public both on-line and on paper copies available at each of these meetings.

In addition to the series of public meetings, information about this project was disseminated through several social media outlets, including Twitter, Facebook and NextDoor; and on the project website (<https://www.clackamas.us/planning/str>). The May 20<sup>th</sup> public meeting, hosted by the County was also streamed live on Facebook. Video of this event generated over 1,700 unique viewers in the months following the event and the video was posted on the project webpage.

The single biggest takeaway from those public meetings was that the public appears to support allowing short-term rentals in the county although there was significant disagreement about the level of regulation that may be appropriate for this use. Not surprisingly, the two biggest areas of concern seem to lie around enforcement and quality of life/safety/neighborhood issues.

(2) On December 3, 2019, Staff posted the third draft (discussed above) of the proposed short-term rental (STR) program and regulations, along with a survey, some basic information about the draft and adoption process, and Staff contact information on the project webpage (<https://www.clackamas.us/planning/str>). General conclusions from written comments received include:

- Mixed support for the program, with no clear majority in support of, or opposed to the proposal. Overall there was more support than less for allowing STRs in the county, but there appears to be varying levels of support for the program and associated regulations. Those opposed cited concerns generally about more fees and perceived this program as unnecessary regulation. Those that supported the program understood the need for regulation, although some did have regulation-specific comments that could result in relatively minor changes to the draft.
- Concern was expressed by a few for not allowing STRs in guest houses or RVs on a property.
- Concern was also expressed by a few about the cost and what the fees would cover (i.e. if this would be a revenue-generating program).

All comments received via email or mail, as well as complete survey results, are attached to this document (Attachment B).

### **Proposed STR Program and Regulations**

The amendments to create the STR program and regulations are proposed for adoption into the County Code as **Section 8.10 Short-Term Rentals** and are the result of over a year of work and input from Planning staff, the BCC, staff in other departments and agencies, the public, and industry professionals, as previously discussed.

Key components of this proposal include the following:

- Regulations would only apply outside of city limits in unincorporated Clackamas County.
- STRs would only be allowed in a legally-established permanent dwelling (either part or all of the dwelling could be rented). This would include allowing for STRs in accessory dwelling units (ADU), but would not allow STRs in guest houses, RVs, tents, barns, shops, or other similar structures. STRs would also not be allowed in a dwelling approved only for a specific use (i.e. farmworkers).
- All STRs would be subject to the same regulations, except that STR properties inside the Portland metropolitan urban growth boundary would be required to be the owner's primary residence or located on the same lot as the owner's primary residence. (The owner would not be required to be there when the short-term rental was occupied). This "primary residence" provision was added as per the request from the BCC at the October, 2019 policy session.
- STRs would have to be registered with the county. In addition to paying a registration fee, which the county would use to pay for administration and enforcement, the short-term rental owner would also be required to provide information at the time of registration, including:
  - Location
  - Contact information for someone who can respond to complaints

- An affidavit of compliance with safety standards
  - Evidence that all county fees and taxes have been paid, including registration with the county's Transient Lodging Tax program
  - Proof of liability insurance
  - A site plan and a dwelling unit floor plan
- Maximum overnight occupancy of two people per sleeping area plus two additional people, however, even if a dwelling contains 7 or more sleeping areas, occupancy may not exceed 15 people.
  - One off-street parking spot required for each two sleeping areas, with a minimum of one parking spot regardless of number of sleeping areas.
  - Garbage pick-up at least once a week, with any outdoor garbage containers required to be covered
  - Posted information about the requirements to comply with provisions in the county's noise ordinance.
  - Building and fire safety requirements related to smoke and carbon monoxide detectors, emergency escape routes, fire extinguishers, etc., which will be confirmed through a self-inspection affidavit to be provided with the registration application.
  - Short-term rental owners who do not comply with the regulations may be subject to enforcement consequences ranging from inspections, citations and fine, up to revocation of registration. Enforcement of the regulations will be carried out by either the Sheriff's Office or Code Enforcement, depending on the issue.

**Funding of the STR program:** Implementation of the STR program, as drafted, is anticipated to require up to two additional FTE, plus additional time for the code enforcement Hearings Officer. Based on personnel cost estimates from DTD and the Finance Department and estimates about the number of STRs in the county from industry professionals, the initial estimate is that the baseline fee for the 2-year registration would need to be \$800 - \$900 in order to support the program.

- This estimate assumes 100% cost recovery through the registration fees for both administration and enforcement of the program; no General Fund money would be required.
- To get to that point, however, there would need to be an initial investment ("seed money") to cover costs to get the program running until such time as the volume of registrants can fully support the program. Discussions are currently underway with the Tourism and Cultural Affairs Department to secure this funding through a grant or other similar source, so that it too would require no General Fund money.

- If the BCC wants to “phase” in the program, an important consideration would be establishing the program with a provision that code enforcement would be deferred until there are enough registrants to support the cost of an additional code enforcement officer. Notably, this would still require some (but not as much) initial “seed money” to set up the registration program, conduct public outreach, and begin processing applications.
- At the September and October policy sessions, the BCC expressed interest in creating some sort of incentive at the start of the program in order to encourage owners of STRs to register (e.g. a discounted fee for an initial period of time, or for STR owners who are already paying the TRT, if they register within a specific amount of time). This incentive will be a part of the initial program fee structure, which would need to be adopted by resolution and added to the Fee Schedule (found in Appendix A of the County Code).

**RECOMMENDATION:**

Staff respectfully requests that the BCC hold this public hearing and schedule a second reading and public hearing of this ordinance on February 13, 2019, at 10 a.m., and to direct staff to draft a resolution establishing a registration fee, and establishing fine amounts for noncompliance with program requirements.

Respectfully submitted,

Nate Boderman  
Assistant County Counsel

Attachments:

- A. ORDINANCE NO. \_\_\_\_\_, An Ordinance Adding Clackamas County Code Chapter 8.10, *Short-Term Rentals* to the Clackamas County Code, and Amending Clackamas County Code Chapter 2.07, *Compliance Hearings Officer*
- B. Public Outreach and Comments

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance Adding  
Clackamas County Code Chapter 8.10, *Short-Term Rentals*  
and Amending Clackamas County Code Chapter 2.07, *Compliance  
Hearings Officer***

WHEREAS, the Board of Commissioners of Clackamas County finds that a property owner’s short-term rental of a dwelling unit is an acceptable activity within the unincorporated areas of Clackamas County; and

WHEREAS, the Board finds that it is in the public’s interest to regulate short-term rentals in order to enhance public safety and livability; and

WHEREAS, the Board finds that the short-term rental of dwelling units could have negative impacts on the cost of housing in Clackamas County, and therefore wish to limit those impacts by requiring those short-term rentals located within the Portland Metropolitan Urban Growth Boundary to be located on the same lot of record as the owner’s primary residence,

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Chapter 8.10, as shown on Exhibit “A”, which is attached hereto and incorporated herein by this reference, is hereby added to the Clackamas County Code.

Section 2: Chapter 2.07 is hereby amended to add a reference to Chapter 8.10, *Short-Term Rentals*, in the second paragraph of Section 2.07.010 for purposes of clarifying that enforcement of the *Short-Term Rental* Chapter shall be processed under the provisions of Chapter 2.07.

**Section 2:** Effective Date. This Ordinance shall be effective on July 1, 2020.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

Ordinance No. \_\_\_\_\_

## **Chapter 8.10**

### **8.10 SHORT-TERM RENTALS**

#### **8.10.010 Purpose**

The purpose of this chapter is to regulate short-term rentals in order to enhance public safety and livability within the unincorporated areas of Clackamas County. Specifically, this chapter addresses public safety concerns typically associated with short-term rentals, and clarifies the process for both property owners and staff related to permitting short-term rentals and enforcing violations of these standards.

#### **8.10.020 Definitions**

Except where the context otherwise requires, the definitions given in this section govern the construction of this chapter.

- A. ADMINISTRATOR means the County Administrator of Clackamas County or his/her designee.
- B. DWELLING UNIT means a building, or portion thereof, with one or more rooms designed for residential occupancy by one family, or, as permitted under Chapter 8.10 for use as a short-term rental.
- C. OCCUPANTS means persons who are authorized to stay overnight within a short-term rental.
- D. OWNER is the owner or owners of a dwelling unit used as a short-term rental.
- E. PREMISES means the short term rental and the lot on which it is located.
- F. PRIMARY RESIDENCE means a dwelling unit where an owner lives most of the time. At a given time, an owner does not have more than one primary residence. For purposes of determining whether a dwelling unit is a primary residence, the County may consider factors that include, but are not limited to: whether the dwelling unit is the legal residence of the owner for purposes of voting, motor vehicle/driver licensing, income tax calculation, and the time the owner has spent at the dwelling unit.
- G. REGISTRANT means the owner, or agent of the owner, designated on the registration to act for the owner, who is responsible for ensuring the short-term rental adheres to all applicable requirements to maintain a short-term rental registration.
- H. REGISTRATION means a short-term rental registration.
- I. SHORT-TERM RENTAL means a dwelling unit, or portion of a dwelling unit, that is rented to any person or entity for lodging or residential purposes, for a period of up to 30 consecutive nights.
- J. SLEEPING AREA means a room or other space within a dwelling unit designed and intended primarily for sleeping.

#### **8.10.030 Applicability**

This chapter shall apply within the unincorporated areas of Clackamas County including within urban growth boundaries, but shall not apply within the boundaries of any incorporated city. This chapter does not apply to hotels, motels, bed and breakfast facilities, hostels, campgrounds, recreational vehicle (RV) camping facilities, or organizational camps.



**8.10.040 Short-Term Rental Registration Requirements and Fee**

- A. All short-term rentals shall be registered, except that any short-term rental that qualifies for an exemption to the Transient Room Tax under Section 8.02.060(C), as “incidental” use of the property, shall be exempt from the registration requirements set forth herein.
- B. Application forms for a registration for a short-term rental will be available at County offices. Applications for initial and renewal registrations for a short-term rental must be submitted to the County and must be signed under penalty of perjury. The application documents must include at least the following:
  - 1. The location of the premises.
  - 2. The true names, telephone numbers, and addresses and any aliases of the persons that have, or have had within the preceding year, a financial interest in the premises.
  - 3. A Land Use Compatibility Statement, signed by a Planning & Zoning Division representative, affirming that the short-term rental has met all applicable requirements in the Clackamas County Zoning and Development Ordinance for a short-term rental and that the dwelling unit complies with Section 8.10.060(A).
  - 4. Signed affidavit of compliance with all building and fire standards in Section 8.10.060(G), and all applicable requirements in Section 8.10.060(D-F).
  - 5. Evidence that all current taxes and fees owed to Clackamas County have been paid for the premises.
  - 6. Evidence that a Transient Room Tax registration form has been submitted to the County.
  - 7. The name, telephone number, and address of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
  - 8. Proof of liability insurance coverage on the short-term rental.
  - 9. A statement that the registrant of the short-term rental has met and will continue to comply with the standards and requirements of this chapter.
  - 10. A site plan that identifies, at a minimum, all structures on the property, driveway(s), off-street parking spaces, and garbage receptacles.
  - 11. A dwelling unit floor plan that identifies, at a minimum, all sleeping areas and other rooms in the dwelling unit.
- C. A separate registration application must be submitted for each proposed short-term rental; however only one short-term rental registration shall be approved per dwelling unit.
- D. At the time of submission of a short-term rental registration application, the registrant must pay a short-term rental registration fee. The fee amount shall be set by resolution of the Board of County Commissioners.
- E. A registration is transferable to a new registrant, so long as the new registrant submits notification to the administrator, signed by the original registrant, of the transfer and agrees in writing to comply with the requirements of this chapter. A change of registrant notification form will be available at County offices. .

**8.10.050 Registration Termination – Renewal – Fee**

- A. A short-term rental registration terminates automatically two years after the date of issuance, unless a newly approved registration application is approved by the county.

- B. Registrants wishing to continue uninterrupted operation of a short-term rental shall submit a new application to the County a minimum of 30 days prior to the expiration of the registration.
- C. At the time of submission of a new short-term rental registration application, the registrant must pay the short-term rental registration application fee. The fee amount shall be set by resolution of the Board of County Commissioners.
- D. A short-term rental registration terminates automatically if state statutes, regulations or guidelines are modified or changed to prohibit operation of the short-term rental under this chapter.

**8.10.060 Standards and Conditions**

Any short-term rental must comply with the following standards at all times, in addition to any other state and local requirements:

- A. Dwelling Unit. The short-term rental must be operated within a legally-established, permanent dwelling unit. The dwelling unit associated with a short-term rental shall not have been established through a land use approval or other approval process that specifically limited the use of the dwelling unit, the occupancy of the dwelling unit, or the duration of the existence of the dwelling unit. Examples of non-qualifying dwellings include those approved as an accessory farmworker dwelling, a caretaker dwelling, or a temporary dwelling for care.
  - 1. Guest houses or other similar structures are not considered to be dwelling units under the county's zoning and development ordinance and may not be used as a short-term rental.
  - 2. Temporary sleeping accommodations such as tents and recreational vehicles are not considered to be dwelling units under the county's zoning and development ordinance and may not be used as a short-term rental.
- B. Maximum Overnight Occupancy. The number of overnight occupants in the short-term rental shall not exceed the number of occupants authorized in the registration. The maximum overnight occupancy shall be clearly posted in the short-term rental, disclosed in any advertising of the availability of the short-term rental, and included in any rental agreement with tenants. The maximum overnight occupancy authorized in the registration shall be calculated as follows:
  - 1. Two occupants per sleeping area, plus two additional occupants.
  - 2. Roll-out beds, fold-out couches, or other similar temporary beds shall not be considered a "sleeping areas" for the purposes of calculating maximum allowed occupancy, but could accommodate the two additional occupants.
  - 3. Children under the age of two shall not be counted as occupants.
  - 4. In no case shall more than 15 occupants be authorized by a short-term rental registration.

- C. Noise. Notice shall be clearly posted in the short-term rental that identifies and informs occupants of their obligation to abide by the County's current noise control ordinance standards (Clackamas County Code Chapter 6.05).
- D. Parking. One off-street motor vehicle parking space per two sleeping areas is required. Garage space may be used to meet required parking standards if evidence is provided that there is sufficient cleared garage space to fit a vehicle(s). All required parking spaces must be available for occupants to use.
  - 1. If the short-term rental contains only one sleeping area, one off-street parking space is required.
  - 2. If the short-term rental cannot provide the required number of parking spaces based on sleeping areas, the registrant may request a reduced maximum overnight occupancy based on available parking. In no case shall the registrant advertise for, or rent to, more persons than are authorized under the reduced maximum occupancy total.
  - 3. In no event shall vehicles block access for emergency vehicles, block access to the premise, or block a parked motor vehicle. Violation of this section may subject the offending vehicle to immediate tow pursuant to ORS 98.853.
- E. Garbage. All garbage from a short-term rental shall be legally removed from the premises by the owner, occupant or franchised service provider at least once per week during any week, or portion thereof, in which the short-term rental is occupied. All outdoor garbage receptacles shall be covered. Recycling container(s) shall be available for use by renters.
- F. Registration Identification. The registration identification number assigned to the short-term rental by the administrator shall be included on any advertisement or rental platform where the short-term rental is offered to the public for occupancy.
- G. Building and Fire Safety. A short-term rental shall comply with all ordinances that apply to a dwelling, and all structural components shall be kept in sound condition and good repair. In addition:
  - 1. Working smoke detectors and carbon monoxide detectors shall be installed and maintained in locations as required in Oregon Residential Specialty Code sections R314.3 and R315.3.
  - 2. Two (2) working fire extinguishers shall be provided in the unit, with one of the extinguishers placed within the kitchen in an easily accessible location
  - 3. Code-compliant pool and hot tub barriers shall be present, if applicable.
  - 4. Every sleeping area shall have not less than one operable emergency escape and rescue opening, including basement sleeping areas. Emergency escape and rescue openings shall have a net clear opening of not less than 5.0 square feet. The net clear height shall not be less than 24 inches, and the net clear width shall not be less than 20 inches.
  - 5. All exterior building exits shall be clear, operable and available to renters.
  - 6. All electrical wiring shall be covered, and wall outlets, switches and junction boxes shall have code-approved covers in place.

7. Electrical panels shall have a clearance space of at least 30 inches from each side, and 78 inches high in front of the panel. All circuit breakers and/or fuses shall be clearly labeled in the event the power needs to be shut off to a certain area or appliance.
8. All restrictions and prohibitions for burning as determined by the local Fire District shall be observed. All wood-burning fire pits and fireplaces shall be covered or made otherwise unavailable during burn prohibition periods. Contact information for the local Fire District shall be clearly posted in the short-term rental.
9. The dwelling shall have no open building or zoning code violations.

H. For any short-term rental located within the Portland Metropolitan Urban Growth Boundary, the dwelling unit to be used as a short-term rental must be located on the same lot of record as the owner's primary residence. However, the owner is not required to be present on the lot of record when the short-term rental is occupied.

#### **8.10.70 Registration Review**

- A. The administrator shall, within thirty (30) days after receipt of a complete application for a short-term rental registration and applicable fee, either issue the owner a registration or provide notice of denial.
- B. Upon approval, the administrator shall furnish notice of the approval to all property owners of record within 300 feet of the premises, and contiguous properties under the same ownership. This approval notice shall provide the name, telephone number, and address of a contact person who shall be responsible and authorized to respond to complaints concerning the use of the short-term rental.
- C. The administrator may deny a registration application for failure to submit the materials or fee set forth in Section 8.10.040, for failure to meet the standards and conditions set forth in Section 8.10.060, for submitting falsified information to the County, or for noncompliance with any other applicable County ordinances.

#### **8.10.080 Examination of Books, Records and Premises**

To determine compliance with the requirements of this chapter, the Clackamas County Zoning and Development Ordinance, and any local tax measures, the administrator may examine or cause to be examined by an agent or representative designated by the administrator, at any reasonable time, the premises, and any and all financial, operational and facility information, including books, papers, and state and federal income tax returns. Every owner is directed and required to furnish to the administrator the means, facilities and opportunity for making such examinations and investigations.

#### **8.10.090 Emergency Revocation**

- A. In the sole determination of the Clackamas County Building Official, when a violation of the building code or applicable county ordinance exists at a short-term rental that presents an immediate serious fire or life safety risk, the Clackamas County Building Official may immediately revoke the short-term rental registration as a fire or life safety risk. The Clackamas County Building Official shall provide written documentation of the violation, and notification of the owner's right to appeal, as provided in 8.10.100.

- B. Upon an emergency revocation, the short-term rental shall not be rented or used as a short-term rental unless the revocation is withdrawn or a new short-term rental registration has been obtained.
- C. At any time following the emergency revocation of a short-term rental registration pursuant to this subsection, the Clackamas County Building Official may reinstate the permit upon a re-inspection by the Clackamas County Building Official verifying that the subject building code or county ordinance violation has been corrected.

**8.10.100 Administration and Enforcement**

The County encourages owners, registrants, occupants, and affected residents and owners of nearby properties, to cooperate directly to resolve conflicts arising from the occupancy of any short-term rental. Along those lines, the first attempt to remedy a violation of any of the standards in this chapter should be to contact the representative associated with the registration, as identified in the approval notice and the required short-term rental posting. In the event that the listed representative does not respond within 24 hours or does not adequately remedy the issue, the Code Enforcement Division of the Department of Transportation and Development should be notified.

- A. Except as otherwise provided for in state law or in the Clackamas County Code, for acts of noncompliance, the Code Enforcement Division of the Department of Transportation and Development or the Finance Department, as appropriate, shall administer, supervise, and perform all acts necessary to enforce this chapter or any other chapters of the Clackamas County Code applicable to short-term rentals.
- B. Citation: whenever an owner operates a short-term rental which is found in violation of, or contrary to, any provision of this chapter, that owner may be issued a citation.
- C. Forms of Citation: the form for the citation to be issued under this chapter shall contain the following: a description of the specific violation alleged, the name and address of the person producing or permitting the violation, the time and place of the occurrence of the violation, the name and address of the office of the Code Enforcement Division of the Department of Transportation and Development, a form for admitting or denying the violation, and a schedule of the forfeiture amounts for specific violations.
- D. A person who receives a citation for violation of this chapter shall respond within fourteen (14) days of the issuance of the citation by payment of any penalties established under this chapter, or by requesting a hearing as provided in this section.
- E. In addition to citation, the Code Enforcement Division of the Department of Transportation and Development may:
  - 1. Require an inspection of the premises;
  - 2. Suspend the short-term rental registration until the short-term rental is in compliance with the standards and conditions set forth in Section 8.10.060; or
  - 3. If there have been three separate violations of this chapter related to the same short-term rental within the applicable two-year registration period, revoke the short-term rental registration.
- F. A person who is denied a short-term rental registration, or who has its registration suspended or revoked may request a hearing as provided in this section.
- G. A person who receives a citation for violation of this chapter may deny all or part of the alleged violation by completing an appropriate response form, attached to the citation,

and mailing or delivering it to the Code Enforcement Division of the Department of Transportation and Development or to the Finance Department, as indicated on the citation. Upon receipt, the appropriate County department shall forward the form to the office of the hearing officer.

- H. A person who is denied a short-term rental registration, or who has its registration suspended or revoked may appeal the determination by completing an appropriate appeal form, and mailing or delivering it to the Code Enforcement Division of the Department of Transportation and Development or to the Finance Department, as indicated on the determination. Upon receipt, the appropriate County department shall forward the form to the office of the hearing officer.
- I. Except as otherwise provided in this chapter, Chapter 2.07 of the Clackamas County Code shall govern the process for enforcement of this chapter, including but not limited to the notice and procedures associated with any compliance hearing.

**8.10.110 Penalties**

Violation of this chapter shall be punishable by suspension or revocation of a short-term rental registration, or by a penalty or fine in an amount set by resolution of the Board of County Commissioners. Except in the case of an emergency revocation, any owner may not obtain or renew a short-term registration on the premises sooner than one year after the date of revocation.

January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for Agreement #9568 a Lease Agreement  
between Clackamas County Health Centers Division (CCHCD) and  
Genoa Healthcare, LLC, for rental of clinical space.

<b>Purpose/Outcomes</b>	Provides CCHCD an on-site pharmacy for patients to fill prescriptions after a healthcare visit to the Beaver creek clinic.
<b>Dollar Amount and Fiscal Impact</b>	CCHCD receives \$631.84 revenue monthly with a 3% maximum increase each fiscal year. No County General Funds are involved. No matching funds required.
<b>Funding Source</b>	Genoa Healthcare, LLC
<b>Duration</b>	Effective January 1, 2020 and it terminates on June 30, 2023.
<b>Previous Board Action</b>	No previous Board action.
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel has reviewed and approved this document. It was approved on January 14, 2020.
<b>Contact Person</b>	Deborah Cockrell 503-742-5495
<b>Contract No.</b>	9568

**BACKGROUND:**


CCHCD of the Health, Housing and Human Services Department requests the approval of Agreement #9568 to a Lease agreement with Genoa Healthcare, LLC, for the purpose of providing an on-site pharmacy inside the Beaver creek clinic. This on-site service will ensure patients get their medication as prescribed by providers at the conclusion of their healthcare appointment.

This is a revenue contract for CCHCD. The total amount of the agreement is projected to be \$36,463.32 with a maximum 3% increase to the monthly rental rate each fiscal year. No County General Funds are involved. The Agreement is effective upon signature and will terminate on June 30, 2023.

**RECOMMENDATION:**

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

Respectfully submitted,

 H3S Deputy : FOR

Richard Swift, Director  
Health, Housing, and Human Services

**LEASE AGREEMENT**  
**Beavercreek Pharmacy Lease**

**#9568**

This Lease is entered into effective January 1, 2020, by and between CLACKAMAS COUNTY, a political subdivision of the State of Oregon, hereinafter called "Lessor," and GENOA HEALTHCARE, LLC (f/k/a Genoa, a QoL Healthcare Company), hereinafter called "Lessee".

The parties have agreed as follows:

**Section 1. LEASE TERM:**

In consideration of the agreements herein contained, the Lessor does hereby let and lease the premises described below to the Lessee to have and to hold from January 1, 2020 through June 30, 2023, unless terminated sooner.

The Lease may be renewed for additional periods upon such terms as are agreed to by the parties in writing.

**Section 2. CONTACT PERSONS:**

Lessee and Lessor will have Contract Administration Persons and Emergency Contacts identified in this agreement for purposes of notification. In the event that Lessor has a change in staff from the persons identified in this agreement a notification will be provided to both county contacts listed below with that update.

Contract Administration Key Persons:

Lessee contact: Bethany Mitricska, Manager Administration Operations, 651-447-4445 or [bmitricska@genoahealthcare.com](mailto:bmitricska@genoahealthcare.com)

Lessor contact: Ed Johnson, Administrative & Financial Services Manager, 503-742-5325 or [ejohnson@clackamas.us](mailto:ejohnson@clackamas.us)

Emergency Contacts:

Lessee contact: Jennifer Cunningham, Pharmacist, 503-841-7782 or [jecunningham@genoahealthcare.com](mailto:jecunningham@genoahealthcare.com)

Lessor contact: Clackamas County Facilities Management, 503-557-6416 or [facilitiesmanagement@clackamas.us](mailto:facilitiesmanagement@clackamas.us)

**Section 3. PREMISES:**

The premises subject to this Lease are a portion of a building known as the Clackamas County Beavercreek Health Clinic, located at 110 Beavercreek Road, Ste. 102, Oregon City, Oregon (the "Pharmacy"), as described in Exhibit A, attached hereto and incorporated by this reference herein. The leased premises consist of 476 square feet of the Clinic and availability of five (5) adjoining parking spaces located on Clackamas County's Red Soils Campus, Assessor's Map T3S, R2E, Section 05C, Tax Lot 00812 (the "Premises"), as depicted on the map in Exhibit B, attached hereto and incorporated by this



reference herein. Lessor will secure the leased space whenever there is an absence of staff or outside of operational hours.

**Section 4. BASE RENT:**

Monthly rent for the Premises is six-hundred thirty-one dollars and eighty-four cents (\$631.84). Rent includes utilities (electricity, natural gas, and water/sewer). It does not include costs for the following expenses that may be incurred with respect to the Premises: telephone service, fax line, computer service and data lines, hazardous waste disposal, janitorial services, and real property or personal property taxes, all of which are the responsibility of the Lessee.

The lease rate shall be fixed for each County fiscal year (July 1 – June 30), and begin at \$15 per square foot per year for the first year of the Lease. At the beginning of each new fiscal year after July 1<sup>st</sup>, and for the duration of the Lease, the rate shall increase by a percentage up to the corresponding change in the Portland Consumer Price Index for All Urban Consumers (CPI-U) for the previous fiscal year, but in no event less than three percent (3%). For example, if the percentage of increase in the Portland CIP-U is less than 2.7%, the rent will increase by 3% for the next year.

Rent not paid when due shall, after ten (10) days' written notice, bear simple interest at the rate of one-and-one-half percent (1.5%) per month until paid.

**Section 5. USE AND ENJOYMENT:**

Lessor covenants that Lessee shall be entitled to possession of the premises for operation of an on-site pharmacy. Lessee covenants not to use the premises for any other purpose without Lessor's prior written consent, or for any unlawful purpose. Lessee shall not allow the creation of any nuisance upon the premises nor create any nuisance upon the same.

**5.1. Restrictions on Use.** In connection with the use of the Premises, Lessee shall:

5.1.1 Comply with all applicable laws and regulations regarding Lessee's use of the Premises,

5.1.2 Refrain from any activity negatively impacting Lessor's ability to insure the Premises or would increase Lessor's existing insurance rate.

5.1.3 Refrain from any use that would be reasonably offensive to other Lessees or owners or users of neighboring properties or that would tend to create a nuisance or damage the reputation of the property.

**Section 6. POSSESSION:**

Lessee shall be entitled to full use and possession of the premises for the entire Lease term unless the Lease is terminated as provided herein.

**Section 7. PROPERTY TAXES:**

This Lease is a net lease. Except as expressly provided in this Lease, Lessee will be responsible for paying all costs and expenses relating to the Premises, including any real and personal property taxes, fees, utilities (other than those in Section 4, above), maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating

to the Premises. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any provision of this Lease. If Lessee fails to make a payment, Lessor will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.

**7.1. Condition of Premises.** Lessor makes no representations or warranties, express or implied, as to the condition of the Premises or its fitness for any particular use by Lessee. Lessee takes the Premises as-is. If conditions pre-exist, or arise, which are determined to be violations of any state or federal OSHA rule or regulation, or any specialty code requirement, Lessor shall make every effort to achieve full compliance within thirty (30) days.

In the event Lessor does not correct any condition as required in items 1 and 2 above, Lessee has the right to terminate this Lease immediately, and shall have no further responsibility to Lessor under this Lease agreement.

**Section 8. INSPECTION:**

Lessor shall have the right personally and through Lessor's agents and workmen to enter into and upon the premises at any reasonable time to perform building maintenance, inspect the premises, and examine the condition thereof, so long as Lessor is accompanied by an Oregon State licensed pharmacist. In the event of an emergency, Lessor may enter the Premises so long as Lessor is accompanied by emergency personnel. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has given Lessee written notice of the repairs that are required.

Lessor shall provide Lessee with access to the common areas and Premises twenty (24) hours per day, seven (7) days per week; however, Lessee shall only operate during normal business hours. Lessor shall provide Lessee with a key and/or security card to permit such access. Lessee shall be permitted to install any security system Lessee deems necessary at Lessee's sole cost and expense.

**Section 9. ALTERATIONS:**

Lessee will make no improvements or alterations on the premises of any kind without first obtaining written consent of Lessor. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. *Alterations* include the installation of computer and telecommunications wiring, cables, and conduit.

All alterations undertaken by Lessee shall be at Lessee's sole expense. Any alterations or improvements by Lessee that cannot reasonably be removed by Lessee without damaging the premises shall become the property of the Lessor upon termination of this Lease.

**Section 10. SIGNS:**

No signs, awnings, antennas, or other apparatus shall be painted on or attached to the building, nor any thing placed on the exterior of the premises without Lessor's written approval, which shall not be unreasonably withheld. All signs installed by Lessee shall comply with Lessor's standards for signs and all applicable codes and ordinances, and all signs and sign hardware shall be removed upon termination of

this Lease, with the sign location restored to its former state unless Lessor elects to retain all or any portion thereof.

**Section 11. REPAIRS and MAINTENANCE:**

Lessee is responsible for any damage caused to the Premises as a result of Lessee's acts or omissions. All maintenance and repairs on or around the leased premises shall be performed by Lessor, subject to reimbursement by Lessee, and done in such a way as to interfere as little as reasonably possible with the use of the premises by the Lessee. Lessor's Facilities Management will be responsible for all repairs and maintenance issues that arise. It is the Lessee's responsibility to contact Facilities Management at the phone number of 503-557-6416 or via email to: [facilitiesmanagement@clackamas.us](mailto:facilitiesmanagement@clackamas.us), once they are aware or made aware of maintenance needs. Lessee shall have no right to an abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirement of this provision.

Notwithstanding the above term, Lessee shall maintain premises in a neat condition, free of trash and debris, in good order and repair. Lessee shall not commit waste to the Premises.

Lessee shall promptly notify Lessor of any necessary repairs and shall, if necessary to protect the leased premises from imminent damage, prior to such notice, arrange for reasonably necessary emergency repairs. Payment for emergency repairs to the Premises shall be the responsibility of Lessor with reimbursement by Lessee.

**Section 12. LIEN CLAIMS AND LIABILITY:**

Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default.

Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**Section 13. PLACE OF PAYMENT AND NOTICE:**

Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out below or to such other address as may be specified from time to time by either of the parties in writing.

Any notice to which Lessor shall be entitled under this Lease shall be delivered or sent to Clackamas County Facilities Management, 1710 S Red Soils Ct. #200, Oregon City, OR 97045. Notice for Lessee shall be mailed to Genoa Healthcare, Attn: General Counsel; 707 S. Grady Way, Suite 700, Renton, WA 98057. Place for notices may be changed by written notice from the party changing address.

**Section 14. INDEMNIFICATION:**

Lessee agrees to indemnify, defend, and hold harmless Lessor, and its officers, agents, and employees against any and all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to Lessor's sole negligence, arising from or related to this Lease and the use of the Premises.

However, neither Lessee nor any attorney engaged by Lessee shall defend the claim in the name of Lessor, nor purport to act as legal representative of Lessor, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for Lessor, nor shall Lessee settle any claim on behalf of Lessor without the approval of the Clackamas County Counsel's Office. Lessor may, at its election and expense, assume its own defense and settlement.

Lessee shall be responsible for insuring its personal property and trade fixtures located on the premises and any alterations or tenant improvements it has made to the Premises. Neither Lessor nor Lessee shall be made liable to the other for any loss or damage caused by water damage, sprinkler leakage, or any of the risks that are or could be covered by a standard all risk insurance policy with an extended coverage endorsement. The parties expressly acknowledge Lessor's self-insurance coverage is sufficient to satisfy Lessor's obligation to maintain coverage for the aforementioned losses or damages.

Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Lessor shall have no liability for the failure or interruption of utilities.

**Section 15. LIABILITY INSURANCE:**

Lessee shall procure and maintain during the term of the Lease the following insurance at Lessee's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than two million dollars (\$2,000,000) and a per occurrence limit of not less than one million dollars (\$1,000,000). Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Lessor's negligence. Such insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under Indemnification, and shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Lessor before any change or cancellation shall be furnished to Lessor before Lessee's occupancy of the Premises.

**Section 16. TOTAL OR PARTIAL DESTRUCTION:**

If the Premises are partly damaged and the cost of repair does not exceed 50% of the value of the structure before the damage, the damage shall be repaired by Lessee at Lessee's expense. Repairs shall be accomplished as soon as reasonably possible subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in a good and workmanlike manner, and in compliance with applicable laws and building codes.

If the property is destroyed or damaged such that the cost of repair exceeds fifty percent of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than ten (10) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of termination. If neither party elects to terminate, Lessor shall proceed to restore the property to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessor's reasonable control. In the event that the

In the event that the Premises becomes damaged to the extent that it cannot be used by Lessee for any period of time Lessor will in no way be responsible to find or pay for replacement facilities for Lessee. Rent shall not be abated during the repair of any damage to the extent the property is untenantable.

**Section 17. HAZARDOUS SUBSTANCES:**

Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed or, or otherwise released on or under the premises. Lessee may use or otherwise handle on the premises only those Hazardous Substances typically used in the prudent and safe operation of Lessee's permitted use of the premises. Lessee may store such Hazardous Substances on the premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the premises. The term *Environmental Law* shall mean any federal, state, or local status, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

**Section 18. EMINENT DOMAIN:**

**18.1. Partial Taking.**

If a portion of the Premises is condemned and Section 1 does not apply, the Lease shall continue on the following terms:

Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

18.1.1. Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

18.1.2. After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

18.1.3. If a portion of Lessor's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the

Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 18.1.1 and 18.1.2 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

**18.2. Total Taking.**

If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Lessee was then making of the premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Lessor under Section 9.2. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

**18.3. Sale in Lieu of Condemnation.**

Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a taking by condemnation.

**Section 19. ASSIGNMENT AND SUBLETTING:**

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, limited liability company, or partnership, this provision shall apply to any transfer of a majority voting interest in stock, membership or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole discretion.

**Section 20. WAIVER:**

Waiver by either party of strict performance of any provision of the Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**Section 21. DEFAULT:**

The following shall be events of default:

**21.1. Default in Rent.**

Failure of Lessee to pay any rent or other charges within ten (10) days written notice after it is due.

**21.2. Default in Other Covenants.**

Lessee fails to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after the date of written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with

if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**21.3. Insolvency.**

Insolvency of Lessee: an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

**21.4. Abandonment.**

Failure of Lessee for ten (10) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

**Section 22. TERMINATION AND DEFAULT:**

**22.1. Termination other than for Default.** Lessor may terminate this Lease in the event the Lessor fails to receive expenditure authority sufficient to allow the Lessor, in the exercise of its reasonable administrative discretion, to continue to perform under this Lease, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Lease is prohibited or the Lessor is prohibited from performing under this Lease from the planned funding source. In such an event, Lessee shall vacate the Premises within thirty (30) days of termination under this Subsection 22.1.

**22.2. Termination for Default.** In the event of a default the Lease may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Lease is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**22.3. Reletting.** Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the Premises, or to any Lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**22.4. Damages.** In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

22.4.1 The loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

22.4.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 22.3, or any other expense occasioned by Lessee's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

22.4.3 Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

**22.5. Right to Sue More than Once.** Lessor may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

**22.6. Lessor's Right to Cure Non-payment Defaults.** If Lessee fails to perform any non-payment obligation under this Lease, Lessor shall have the option to correct the default so after ten (10) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

**22.7. Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

**22.8 Compliance with Pharmacy Laws on Termination.** Notwithstanding anything set forth in this Lease to the contrary, Lessor shall not interfere with Lessee's compliance with applicable pharmacy laws, rules or regulations and Lessee's proper handling or disposition of its pharmaceutical products upon termination of this Lease. This provision shall be effective even upon a termination of this Lease by Lessor following the occurrence of a default. Lessee shall, to the maximum extent permitted by applicable law, comply with applicable pharmacy laws, rules or regulations in a manner consistent with the terms of this Lease.

### **Section 23. MUTUAL TERMINATION:**

This Lease can be terminated by either party with ninety (90) days' written notice.

The parties have executed a separate professional services contract, dated September 27, 2018, ("Professional Services Contract"). If the Professional Services Contract between the parties is terminated, then this Lease shall automatically terminate with the same effective date as the termination of the Professional Services Contract.



### **23.1. Surrender at Expiration**

**23.1.1. Condition of Premises.** On expiration of the lease term or earlier termination, Lessee shall surrender the Premises in first-class condition. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be expected but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

**23.1.2. Fixtures.** All fixtures placed on the Premises during the term shall remain the property of Lessee. Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty (20) days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

### **23.2.1. Holdover.**

23.2.1.a. If Lessee does not vacate the Premises at the time required, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to current base rent as charged per month, or to eject Lessee from the Premises and recover damages caused by wrongful holdover. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures that Lessee is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

23.2.1.b. If a month-to-month tenancy results from a holdover by Lessee under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days before the termination date which shall be specified in the notice. Lessee waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

### **Section 24. NONMERGER:**

There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

## **Section 25. MISCELLANEOUS**

**25.1. Non-waiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure to perform an obligation under this Lease except for the failure to pay the rent so accepted when due and shall not affect Lessor's remedies for failure to perform such other obligations.

**25.2. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses

**25.3. Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out above or to such other address as may be specified from time to time by either of the parties in writing.

**25.4. Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**25.5. Recordation.** This Lease shall be recorded without the written consent of Lessee.

**25.6. Entry for Inspection.** Lessor shall have the right to enter on the Premises at any time to determine Lessee's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective Lessee or purchaser; to conduct surveys, inspections, tests and analysis and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

**25.7. Proration of Rent.** In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.

**25.8. Time of Essence.** Time is of the essence of the performance of each of Lessee's obligations under this Lease.

**25.9. Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Lease, Lessor is specifically not obligating itself, or any other department of Clackamas County with respect to any discretionary action relating to the Lease or the Premises including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.

**25.10. Relationship.** Nothing contained in this Lease will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between the Lessee and Lessor.

**25.11. Integration.** Except as otherwise set forth herein, this Lease constitutes the entire agreement between the parties on the subject matter of this Lease. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease.

**25.12. Survival.** All provisions in Sections 7, 9, 12, 14, 15, 16, 17, 20, 21, 22, and 25 shall survive the termination of this Lease, together with all other rights and obligations herein which by their context are intended to survive.

**25.13. Further Assurances.** The parties to this Lease agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

**25.14. Force Majeure.** Notwithstanding any other provision herein, no party will be liable for breach or default of this Lease due to delay in performing its obligations under this Lease to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, strikes, labor disputes, volcanoes, fire, flood, earthquake, weather, acts of God, epidemic, acts of any federal, state or local government or agency, or any other event beyond the reasonable control of the affected party.

**25.15. Applicable Law and Venue.** This Lease shall be construed, applied and enforced in accordance with the laws of the State of Oregon with giving effect to the conflict of laws provisions thereof. Any claim between Lessor and Lessee that arises from or relates to this Lease 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 Lessor 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. Lessee, by execution of this Lease, hereby consents to the in personam jurisdiction of the courts referenced in this section.

**25.16. Mediation Option.** The parties acknowledge that mediation may help the parties to settle their dispute. Therefore, in case of dispute under this Lease, either party may propose mediation whenever appropriate by any mediation process or mediator as the parties may mutually agree upon (each in their sole discretion).

**25.17. Changes in Writing.** This Lease and any of its terms may only be changed, waived, discharged or terminated by written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

**25.18. Counterparts.** This Lease may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

**25.19. Invalidity of Provisions.** In the event any provision of this Lease is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

**25.20. Neutral Construction.** This Lease has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

**25.21. Captions.** The captions of the section and subsections are used solely for convenience and are not intended to alter or confine the provisions of this Lease.

**25.22. Remedies.** In the event of a breach of this agreement, the parties shall have all remedies available at law or equity.

**25.23. Debt Limitation.** This Lease 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.

**Section 26. ENTIRE AGREEMENT:**

This Lease contains the entire agreement of Lessor and Lessee, and all prior written and oral agreements and representations between the parties are void. Lessor and Lessee agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Lease. Neither Lessor nor Lessee is relying on any representations of the other party except those expressly set forth herein.

*The rest of this page is intentionally left blank. Signature pages below.*

**WARRANT OF AUTHORITY:**

The undersigned, \_\_\_\_\_, warrants and represents that they have full authority to sign on behalf Lessee.

**LESSOR**

CLACKAMAS COUNTY BOARD  
OF  
COUNTY COMMISSIONERS by:

\_\_\_\_\_  
Jim Bernard, Chair

Approved as to form:

\_\_\_\_\_  
Office of County Counsel

\_\_\_\_\_  
Date

**State of Oregon**  
**County of Clackamas**

This record was acknowledged before me  
on  
(date) \_\_\_\_\_ by \_\_\_\_\_  
as the Chair of Clackamas County.

Stamp (if required):

Notarial Officer  
Signature: \_\_\_\_\_

Title of Office: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**LESSEE**

GENOA, HEALTHCARE, LLC  
707 S. GRADY WAY, SUITE 700,  
RENTON, WA 98057

  
Authorized Signature

Mark J. Peterson  
Printed Name

January 13, 2020  
Date

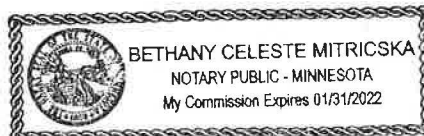
27-0556097  
Federal ID #

**State of Minnesota  
County of Dakota**

This record was acknowledged before me

on  
(date) 1/13/2020 by Mark J Peterson  
as the Chief Executive Officer

Stamp (if required):



Notarial Officer

Signature: Bethany C Mitricska

Title of Office: Notary Public

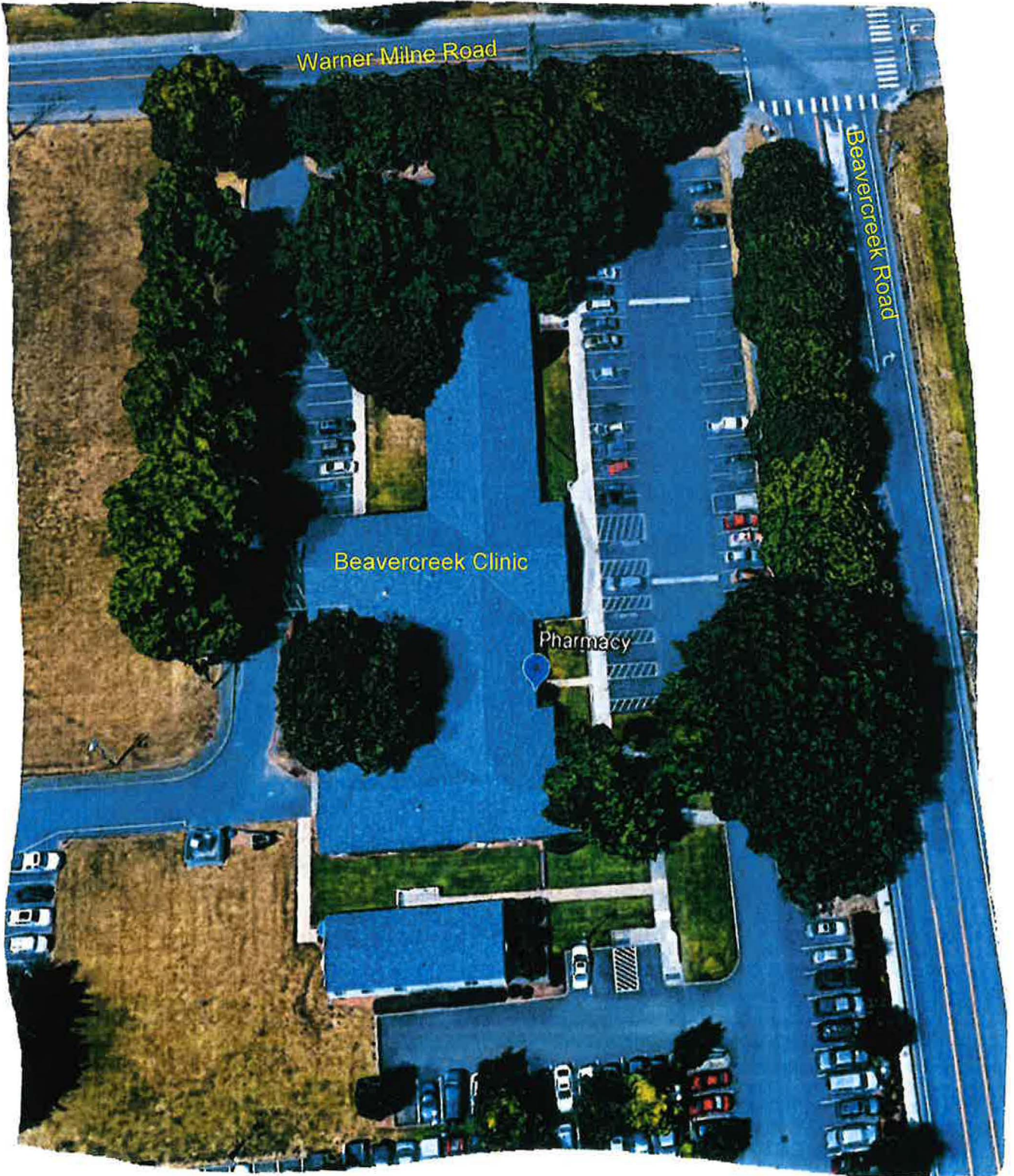
My Commission Expires: 1/31/2022

**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

**DESCRIPTION OF PROPERTY:**

The leased premises consists of 476 square feet of the Clinic and availability of five (5) adjoining parking spaces located at 110 Beavercreek Road, Suite 102, Oregon City, OR. Assessor's Map T3S, R2E, Section 05C, Tax Lot 00812 (the "Premises"). Google Earth Map of Premises is Exhibit B.

# EXHIBIT B GOOGLE EARTH MAP OF PROPERTY





January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for Agreement #9570 a Lease Agreement  
between Clackamas County Health Centers Division (CCHCD) and  
Genoa Healthcare, LLC, for rental of clinical space.

<b>Purpose/Outcomes</b>	Provides CCHCD an on-site pharmacy for patients to fill prescriptions after a healthcare visit to the Hilltop clinic.
<b>Dollar Amount and Fiscal Impact</b>	CCHCD receives \$631.84 revenue monthly with a 3% maximum increase each fiscal year. No County General Funds are involved. No matching funds required.
<b>Funding Source</b>	Genoa Healthcare, LLC
<b>Duration</b>	Effective January 1, 2020 and it terminates on June 30, 2023.
<b>Previous Board Action</b>	No previous Board action.
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel has reviewed and approved this document. It was approved on January 14, 2020.
<b>Contact Person</b>	Deborah Cockrell 503-742-5495
<b>Contract No.</b>	9570

**BACKGROUND:**

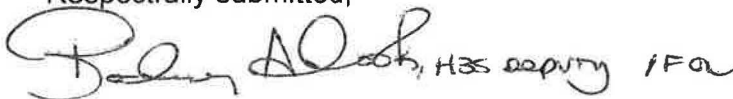
CCHCD of the Health, Housing and Human Services Department requests the approval of Agreement #9570 to a Lease agreement with Genoa Healthcare, LLC, for the purpose of providing an on-site pharmacy inside the Hilltop clinic. This on-site service will ensure patients get their medication as prescribed by providers at the conclusion of their healthcare appointment.

This is a revenue contract for CCHCD. The total amount of the agreement is projected to be \$36,463.32 with a maximum 3% increase to the monthly rental rate each fiscal year. No County General Funds are involved. The Agreement is effective upon signature and will terminate on June 30, 2023.

**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 Swift, Director  
Health, Housing, and Human Services

**LEASE AGREEMENT**  
**Hilltop Pharmacy Lease**

**#9570**

This Lease is entered into effective January 1, 2020, by and between CLACKAMAS COUNTY, a political subdivision of the State of Oregon, hereinafter called "Lessor," and GENOA HEALTHCARE, LLC (f/k/a Genoa, a QoL Healthcare Company), hereinafter called "Lessee".

The parties have agreed as follows:

**Section 1. LEASE TERM:**

In consideration of the agreements herein contained, the Lessor does hereby let and lease the premises described below to the Lessee to have and to hold from January 1, 2020 through June 30, 2023, unless terminated sooner.

The Lease may be renewed for additional periods upon such terms as are agreed to by the parties in writing.

**Section 2. CONTACT PERSONS:**

Lessee and Lessor will have Contract Administration Persons and Emergency Contacts identified in this agreement for purposes of notification. In the event that Lessor has a change in staff from the persons identified in this agreement a notification will be provided to both county contacts listed below with that update.

Contract Administration Key Persons:

Lessee contact: Bethany Mitricska, Manager Administration Operations, 651-447-4445 or [bmitricska@genoahealthcare.com](mailto:bmitricska@genoahealthcare.com)

Lessor contact: Ed Johnson, Administrative & Financial Services Manager, 503-742-5325 or [ejohnson@clackamas.us](mailto:ejohnson@clackamas.us)

Emergency Contacts:

Lessee contact: Jennifer Cunningham, Pharmacist, 717-451-7172 or [bstaub@genoahealthcare.com](mailto:bstaub@genoahealthcare.com)

Lessor contact: Clackamas County Facilities Management, 503-557-6416 or [facilitiesmanagement@clackamas.us](mailto:facilitiesmanagement@clackamas.us)

**Section 3. PREMISES:**

The premises subject to this Lease are a portion of a building known as the Clackamas County Beaver Creek Health Clinic, located at 998 Library Court, Oregon City, Oregon (the "Pharmacy"), as described in Exhibit A, attached hereto and incorporated by this reference herein. The leased premises consist of 317 square feet of the Clinic and availability of five (5) adjoining parking spaces located on Clackamas County's Red Soils Campus, Assessor's Map T3S, R2E, Section 05C, Tax Lot 00812 (the "Premises"), as depicted on the map in Exhibit B, attached hereto and incorporated by this reference herein. Lessor will secure the leased space whenever there is an absence of staff or outside of operational hours.

**Section 4. BASE RENT:**

Monthly rent for the Premises is six-hundred thirty-one dollars and eighty-four cents (\$631.84). Rent includes utilities (electricity, natural gas, and water/sewer). It does not include costs for the following expenses that may be incurred with respect to the Premises: telephone service, fax line, computer service and data lines, hazardous waste disposal, janitorial services, and real property or personal property taxes, all of which are the responsibility of the Lessee.

The lease rate shall be fixed for each County fiscal year (July 1 – June 30), and begin at \$15 per square foot per year for the first year of the Lease. At the beginning of each new fiscal year after July 1<sup>st</sup>, and for the duration of the Lease, the rate shall increase by a percentage up to the corresponding change in the Portland Consumer Price Index for All Urban Consumers (CPI-U) for the previous fiscal year, but in no event less than three percent (3%). For example, if the percentage of increase in the Portland CIP-U is less than 2.7%, the rent will increase by 3% for the next year.

Rent not paid when due shall, after ten (10) days' written notice, bear simple interest at the rate of one-and-one-half percent (1.5%) per month until paid.

**Section 5. USE AND ENJOYMENT:**

Lessor covenants that Lessee shall be entitled to possession of the premises for operation of an on-site pharmacy. Lessee covenants not to use the premises for any other purpose without Lessor's prior written consent, or for any unlawful purpose. Lessee shall not allow the creation of any nuisance upon the premises nor create any nuisance upon the same.

**5.1. Restrictions on Use.** In connection with the use of the Premises, Lessee shall:

5.1.1 Comply with all applicable laws and regulations regarding Lessee's use of the Premises,

5.1.2 Refrain from any activity negatively impacting Lessor's ability to insure the Premises or would increase Lessor's existing insurance rate.

5.1.3 Refrain from any use that would be reasonably offensive to other Lessees or owners or users of neighboring properties or that would tend to create a nuisance or damage the reputation of the property.

**Section 6. POSSESSION:**

Lessee shall be entitled to full use and possession of the premises for the entire Lease term unless the Lease is terminated as provided herein.

**Section 7. PROPERTY TAXES:**

This Lease is a net lease. Except as expressly provided in this Lease, Lessee will be responsible for paying all costs and expenses relating to the Premises, including any real and personal property taxes, fees, utilities (other than those in Section 4, above), maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any provision of this Lease. If Lessee fails to make a

payment, Lessor will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.

**7.1. Condition of Premises.** Lessor makes no representations or warranties, express or implied, as to the condition of the Premises or its fitness for any particular use by Lessee. Lessee takes the Premises as-is. If conditions pre-exist, or arise, which are determined to be violations of any state or federal OSHA rule or regulation, or any specialty code requirement, Lessor shall make every effort to achieve full compliance within thirty (30) days.

In the event Lessor does not correct any condition as required in items 1 and 2 above, Lessee has the right to terminate this Lease immediately, and shall have no further responsibility to Lessor under this Lease agreement.

**Section 8. INSPECTION:**

Lessor shall have the right personally and through Lessor's agents and workmen to enter into and upon the premises at any reasonable time to perform building maintenance, inspect the premises, and examine the condition thereof, so long as Lessor is accompanied by an Oregon State licensed pharmacist. In the event of an emergency, Lessor may enter the Premises so long as Lessor is accompanied by emergency personnel. Whether or not such inspection is made, the duty of Lessor to make repairs shall not mature until a reasonable time after Lessor has given Lessee written notice of the repairs that are required.

Lessor shall provide Lessee with access to the common areas and Premises twenty (24) hours per day, seven (7) days per week; however, Lessee shall only operate during normal business hours. Lessor shall provide Lessee with a key and/or security card to permit such access. Lessee shall be permitted to install any security system Lessee deems necessary at Lessee's sole cost and expense.

**Section 9. ALTERATIONS:**

Lessee will make no improvements or alterations on the premises of any kind without first obtaining written consent of Lessor. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes. *Alterations* include the installation of computer and telecommunications wiring, cables, and conduit.

All alterations undertaken by Lessee shall be at Lessee's sole expense. Any alterations or improvements by Lessee that cannot reasonably be removed by Lessee without damaging the premises shall become the property of the Lessor upon termination of this Lease.

**Section 10. SIGNS:**

No signs, awnings, antennas, or other apparatus shall be painted on or attached to the building, nor any thing placed on the exterior of the premises without Lessor's written approval, which shall not be unreasonably withheld. All signs installed by Lessee shall comply with Lessor's standards for signs and all applicable codes and ordinances, and all signs and sign hardware shall be removed upon termination of this Lease, with the sign location restored to its former state unless Lessor elects to retain all or any portion thereof.

**Section 11. REPAIRS and MAINTENANCE:**

Lessee is responsible for any damage caused to the Premises as a result of Lessee's acts or omissions. All maintenance and repairs on or around the leased premises shall be performed by Lessor, subject to reimbursement by Lessee, and done in such a way as to interfere as little as reasonably possible with the use of the premises by the Lessee. Lessor's Facilities Management will be responsible for all repairs and maintenance issues that arise. It is the Lessee's responsibility to contact Facilities Management at the phone number of 503-557-6416 or via email to: [facilitiesmanagement@clackamas.us](mailto:facilitiesmanagement@clackamas.us), once they are aware or made aware of maintenance needs. Lessee shall have no right to an abatement of rent or any claim against Lessor for any inconvenience or disturbance resulting from Lessor's activities performed in conformance with the requirement of this provision.

Notwithstanding the above term, Lessee shall maintain premises in a neat condition, free of trash and debris, in good order and repair. Lessee shall not commit waste to the Premises.

Lessee shall promptly notify Lessor of any necessary repairs and shall, if necessary to protect the leased premises from imminent damage, prior to such notice, arrange for reasonably necessary emergency repairs. Payment for emergency repairs to the Premises shall be the responsibility of Lessor with reimbursement by Lessee.

**Section 12. LIEN CLAIMS AND LIABILITY:**

Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

If Lessee fails to pay any such claims or to discharge any lien, Lessor may do so and collect the cost as additional rent. Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Lessor and shall be payable on demand. Such action by Lessor shall not constitute a waiver of any right or remedy that Lessor may have on account of Lessee's default.

Lessee may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Lessor's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Lessee shall, within ten (10) days after knowledge of the filing, secure the discharge of the lien or deposit with Lessor cash or sufficient corporate surety bond or other surety satisfactory to Lessor in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

**Section 13. PLACE OF PAYMENT AND NOTICE:**

Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out below or to such other address as may be specified from time to time by either of the parties in writing.

Any notice to which Lessor shall be entitled under this Lease shall be delivered or sent to Clackamas County Facilities Management, 1710 S Red Soils Ct. #200, Oregon City, OR 97045. Notice for Lessee shall be mailed to Genoa Healthcare, Attn: General Counsel; 707 S. Grady Way, Suite 700, Renton, WA 98057. Place for notices may be changed by written notice from the party changing address.

**Section 14. INDEMNIFICATION:**

Lessee agrees to indemnify, defend, and hold harmless Lessor, and its officers, agents, and employees against any and all liability, loss, and costs arising from actions, suits, claims, or demands, except when due to Lessor's sole negligence, arising from or related to this Lease and the use of the Premises.

However, neither Lessee nor any attorney engaged by Lessee shall defend the claim in the name of Lessor, nor purport to act as legal representative of Lessor, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for Lessor, nor shall Lessee settle any claim on behalf of Lessor without the approval of the Clackamas County Counsel's Office. Lessor may, at its election and expense, assume its own defense and settlement.

Lessee shall be responsible for insuring its personal property and trade fixtures located on the premises and any alterations or tenant improvements it has made to the Premises. Neither Lessor nor Lessee shall be made liable to the other for any loss or damage caused by water damage, sprinkler leakage, or any of the risks that are or could be covered by a standard all risk insurance policy with an extended coverage endorsement. The parties expressly acknowledge Lessor's self-insurance coverage is sufficient to satisfy Lessor's obligation to maintain coverage for the aforementioned losses or damages.

Lessor shall have no liability to Lessee for any injury, loss, or damage caused by third parties, or by any condition of the Premises. Lessor shall have no liability for the failure or interruption of utilities.

**Section 15. LIABILITY INSURANCE:**

Lessee shall procure and maintain during the term of the Lease the following insurance at Lessee's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than two million dollars (\$2,000,000) and a per occurrence limit of not less than one million dollars (\$1,000,000). Such insurance shall cover all risks arising directly or indirectly out of Lessee's activities on or any condition of the Premises whether or not related to an occurrence caused or contributed to by Lessor's negligence. Such insurance shall protect Lessee against the claims of Lessor on account of the obligations assumed by Lessee under Indemnification, and shall name Lessor as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Lessor before any change or cancellation shall be furnished to Lessor before Lessee's occupancy of the Premises.

**Section 16. TOTAL OR PARTIAL DESTRUCTION:**

If the Premises are partly damaged and the cost of repair does not exceed 50% of the value of the structure before the damage, the damage shall be repaired by Lessee at Lessee's expense. Repairs shall be accomplished as soon as reasonably possible subject to interruptions and delays from labor disputes and matters beyond the control of Lessee and shall be performed in a good and workmanlike manner, and in compliance with applicable laws and building codes.

If the property is destroyed or damaged such that the cost of repair exceeds fifty percent of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than ten (10) days following the date of damage. In such event all rights and obligations of the parties shall cease as of the date of

termination. If neither party elects to terminate, Lessor shall proceed to restore the property to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Lessor's reasonable control. In the event that the

In the event that the Premises becomes damaged to the extent that it cannot be used by Lessee for any period of time Lessor will in no way be responsible to find or pay for replacement facilities for Lessee. Rent shall not be abated during the repair of any damage to the extent the property is untenable.

**Section 17. HAZARDOUS SUBSTANCES:**

Lessee shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed or, or otherwise released on or under the premises. Lessee may use or otherwise handle on the premises only those Hazardous Substances typically used in the prudent and safe operation of Lessee's permitted use of the premises. Lessee may store such Hazardous Substances on the premises only in quantities necessary to satisfy Lessee's reasonably anticipated needs. Lessee shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the premises. The term *Environmental Law* shall mean any federal, state, or local status, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

**Section 18. EMINENT DOMAIN:**

**18.1. Partial Taking.**

If a portion of the Premises is condemned and Section 1 does not apply, the Lease shall continue on the following terms:

Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

18.1.1. Lessor shall proceed as soon as reasonably possible to make such repairs and alterations to the Premises as are necessary to restore the remaining Premises to a condition as comparable as reasonably practicable to that existing at the time of the condemnation.

18.1.2. After the date on which title vests in the condemning authority or an earlier date on which alterations or repairs are commenced by Lessor to restore the balance of the Premises in anticipation of taking, the rent shall be reduced in proportion to the reduction in value of the Premises as an economic unit on account of the partial taking.

18.1.3. If a portion of Lessor's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Sections 18.1.1 and 18.1.2 apply, and the rent shall be reduced to the extent of reduction in rental value of the Premises as though a portion had been physically taken.

**18.2. Total Taking.**

If a condemning authority takes all of the Premises or a portion sufficient to render the remaining premises reasonably unsuitable for the use that Lessee was then making of the premises, the Lease shall terminate as of the date the title vests in the condemning authorities. Such termination shall have the same effect as a termination by Lessor under Section 9.2. Lessor shall be entitled to all of the proceeds of condemnation, and Lessee shall have no claim against Lessor as a result of the condemnation.

**18.3. Sale in Lieu of Condemnation.**

Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 10 as a taking by condemnation.

**Section 19. ASSIGNMENT AND SUBLETTING:**

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conferred on any third person by any other means, without the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation, limited liability company, or partnership, this provision shall apply to any transfer of a majority voting interest in stock, membership or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor may withhold or condition such consent in its sole discretion.

**Section 20. WAIVER:**

Waiver by either party of strict performance of any provision of the Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

**Section 21. DEFAULT:**

The following shall be events of default:

**21.1. Default in Rent.**

Failure of Lessee to pay any rent or other charges within ten (10) days written notice after it is due.

**21.2. Default in Other Covenants.**

Lessee fails to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within twenty (20) days after the date of written notice by Lessor specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the twenty (20) day period, this provision shall be complied with if Lessee begins correction of the default within the twenty (20) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

**21.3. Insolvency.**

Insolvency of Lessee: an assignment by Lessee for the benefit of creditors; the filing by Lessee of a voluntary petition in bankruptcy; an adjudication that Lessee is bankrupt or the appointment of a



receiver of the properties of Lessee; the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within thirty (30) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten (10) days shall constitute a default. If Lessee consists of two or more individuals or business entities, the events of default specified in this Section 14.3 shall apply to each individual unless within ten (10) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Lessor that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Lessee under the Lease.

#### **21.4. Abandonment.**

Failure of Lessee for ten (10) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

### **Section 22. TERMINATION AND DEFAULT:**

**22.1. Termination other than for Default.** Lessor may terminate this Lease in the event the Lessor fails to receive expenditure authority sufficient to allow the Lessor, in the exercise of its reasonable administrative discretion, to continue to perform under this Lease, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Lease is prohibited or the Lessor is prohibited from performing under this Lease from the planned funding source. In such an event, Lessee shall vacate the Premises within thirty (30) days of termination under this Subsection 22.1.

**22.2. Termination for Default.** In the event of a default the Lease may be terminated at the option of Lessor by written notice to Lessee. Whether or not the Lease is terminated by the election of Lessor or otherwise, Lessor shall be entitled to recover damages from Lessee for the default, and Lessor may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**22.3. Reletting.** Following reentry or abandonment, Lessor may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Lessor shall not be required to relet for any use or purpose other than that specified in the Lease or which Lessor may reasonably consider injurious to the Premises, or to any Lessee that Lessor may reasonably consider objectionable. Lessor may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**22.4. Damages.** In the event of termination or retaking of possession following default, Lessor shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

22.4.1 The loss of rental from the date of default until a new Lessee is, or with the exercise of reasonable efforts could have been, secured and paying rent.

22.4.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Lessee's property and fixtures, costs incurred under Section 22.3, or any other expense occasioned by Lessee's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

22.4.3 Any excess of the value of the rent and all of Lessee's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the earlier of the date of trial or the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

**22.5. Right to Sue More than Once.** Lessor may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

**22.6. Lessor's Right to Cure Non-payment Defaults.** If Lessee fails to perform any non-payment obligation under this Lease, Lessor shall have the option to correct the default so after ten (10) days' written notice to Lessee. All of Lessor's expenditures to correct the default shall be reimbursed by Lessee on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Lessor. Such action by Lessor shall not waive any other remedies available to Lessor because of the default.

**22.7. Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

**22.8 Compliance with Pharmacy Laws on Termination.** Notwithstanding anything set forth in this Lease to the contrary, Lessor shall not interfere with Lessee's compliance with applicable pharmacy laws, rules or regulations and Lessee's proper handling or disposition of its pharmaceutical products upon termination of this Lease. This provision shall be effective even upon a termination of this Lease by Lessor following the occurrence of a default. Lessee shall, to the maximum extent permitted by applicable law, comply with applicable pharmacy laws, rules or regulations in a manner consistent with the terms of this Lease.

## **Section 23. MUTUAL TERMINATION:**

This Lease can be terminated by either party with ninety (90) days' written notice.

The parties have executed a separate professional services contract, dated September 27, 2018, ("Professional Services Contract"). If the Professional Services Contract between the parties is terminated, then this Lease shall automatically terminate with the same effective date as the termination of the Professional Services Contract.

### **23.1. Surrender at Expiration**

**23.1.1. Condition of Premises.** On expiration of the lease term or earlier termination, Lessee shall surrender the Premises in first-class condition. Alterations constructed by Lessee with permission from Lessor shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose

for which the Premises are leased shall be expected but repairs for which Lessee is responsible shall be completed to the latest practical date before such surrender. Lessee's obligations under this section shall be subordinate to the provisions of Section 8 relating to destruction.

**23.1.2. Fixtures.** All fixtures placed on the Premises during the term shall remain the property of Lessee. Before expiration or other termination of the lease term, Lessee shall remove all furnishings, furniture, and trade fixtures. If Lessee fails to do so, this failure shall be an abandonment of the property, and Lessor may retain the property and all rights of Lessee with respect to it shall cease or, by notice in writing given to Lessee within twenty (20) days after removal was required, Lessor may elect to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove, Lessor may effect a removal and place the property in public storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Lessor.

**23.2.1. Holdover.**

23.2.1.a. If Lessee does not vacate the Premises at the time required, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all of the provisions of this Lease except the provisions for term and renewal and at a rental rate equal to current base rent as charged per month, or to eject Lessee from the Premises and recover damages caused by wrongful holdover. Failure of Lessee to remove fixtures, furniture, furnishings, or trade fixtures that Lessee is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another Lessee or with occupancy by Lessor for any purpose including preparation for a new Lessee.

23.2.1.b. If a month-to-month tenancy results from a holdover by Lessee under this Section 15.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given not less than ten (10) days before the termination date which shall be specified in the notice. Lessee waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

**Section 24. NONMERGER:**

There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

**Section 25. MISCELLANEOUS**

**25.1. Non-waiver.** Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The acceptance of a late payment of rent shall not waive the failure

to perform an obligation under this Lease except for the failure to pay the rent so accepted when due and shall not affect Lessor's remedies for failure to perform such other obligations.

**25.2. No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses

**25.3. Notices.** Any notice required or permitted under this Lease shall be given when actually delivered or forty eight (48) hours after deposited in United States mail as certified mail return receipt requested addressed to the address set out above or to such other address as may be specified from time to time by either of the parties in writing.

**25.4. Succession.** Subject to the above-stated limitations on transfer of Lessee's interest, this Lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**25.5. Recordation.** This Lease shall be recorded without the written consent of Lessee.

**25.6. Entry for Inspection.** Lessor shall have the right to enter on the Premises at any time to determine Lessee's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective Lessee or purchaser; to conduct surveys, inspections, tests and analysis and in addition shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

**25.7. Proration of Rent.** In the event of commencement or termination of this Lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Lessee or paid on its account.

**25.8. Time of Essence.** Time is of the essence of the performance of each of Lessee's obligations under this Lease.

**25.9. Non-Waiver of Governmental Rights.** Subject to the terms and conditions of this Lease, Lessor is specifically not obligating itself, or any other department of Clackamas County with respect to any discretionary action relating to the Lease or the Premises including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental approvals that are or may be required.

**25.10. Relationship.** Nothing contained in this Lease will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, or any other relationship of a similar nature between the Lessee and Lessor.

**25.11. Integration.** Except as otherwise set forth herein, this Lease constitutes the entire agreement between the parties on the subject matter of this Lease. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Lease.

**25.12. Survival.** All provisions in Sections 7, 9, 12, 14, 15, 16, 17, 20, 21, 22, and 25 shall survive the termination of this Lease, together with all other rights and obligations herein which by their context are intended to survive.

**25.13. Further Assurances.** The parties to this Lease agree to execute and deliver such additional documents and to perform such additional acts as may be reasonably necessary to give effect to the terms and provisions contemplated herein.

**25.14. Force Majeure.** Notwithstanding any other provision herein, no party will be liable for breach or default of this Lease due to delay in performing its obligations under this Lease to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, strikes, labor disputes, volcanoes, fire, flood, earthquake, weather, acts of God, epidemic, acts of any federal, state or local government or agency, or any other event beyond the reasonable control of the affected party.

**25.15. Applicable Law and Venue.** This Lease shall be construed, applied and enforced in accordance with the laws of the State of Oregon with giving effect to the conflict of laws provisions thereof. Any claim between Lessor and Lessee that arises from or relates to this Lease 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 Lessor 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. Lessee, by execution of this Lease, hereby consents to the in personam jurisdiction of the courts referenced in this section.

**25.16. Mediation Option.** The parties acknowledge that mediation may help the parties to settle their dispute. Therefore, in case of dispute under this Lease, either party may propose mediation whenever appropriate by any mediation process or mediator as the parties may mutually agree upon (each in their sole discretion).

**25.17. Changes in Writing.** This Lease and any of its terms may only be changed, waived, discharged or terminated by written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

**25.18. Counterparts.** This Lease may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Lease.

**25.19. Invalidity of Provisions.** In the event any provision of this Lease is declared invalid or is unenforceable for any reason, such provision shall be deleted from such document and shall not invalidate any other provision contained in the document.

**25.20. Neutral Construction.** This Lease has been negotiated with each party having the opportunity to consult with legal counsel and shall not be construed against either party.

**25.21. Captions.** The captions of the section and subsections are used solely for convenience and are not intended to alter or confine the provisions of this Lease.

**25.22. Remedies.** In the event of a breach of this agreement, the parties shall have all remedies available at law or equity.

**25.23. Debt Limitation.** This Lease 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.

**Section 26. ENTIRE AGREEMENT:**

This Lease contains the entire agreement of Lessor and Lessee, and all prior written and oral agreements and representations between the parties are void. Lessor and Lessee agree that there are no implied covenants or other agreements between the parties except as expressly set forth in this Lease. Neither Lessor nor Lessee is relying on any representations of the other party except those expressly set forth herein.

*The rest of this page is intentionally left blank. Signature page below.*

**WARRANT OF AUTHORITY:**

The undersigned, \_\_\_\_\_, warrants and represents that they have full authority to sign on behalf Lessee.

**LESSOR**

CLACKAMAS COUNTY BOARD  
OF  
COUNTY COMMISSIONERS by:

\_\_\_\_\_  
Jim Bernard, Chair

Approved as to form:

\_\_\_\_\_  
Office of County Counsel

\_\_\_\_\_  
Date

**State of Oregon**  
**County of Clackamas**

This record was acknowledged before me  
on  
(date) \_\_\_\_\_ by \_\_\_\_\_  
as the Chair of Clackamas County.

Stamp (if required):

Notarial Officer  
Signature: \_\_\_\_\_

Title of Office: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**LESSEE**  
GENOA, HEALTHCARE, LLC  
707 S. GRADY WAY, SUITE 700  
RENTON, WA 98057

  
Authorized Signature

Mark J Peterson  
Printed Name

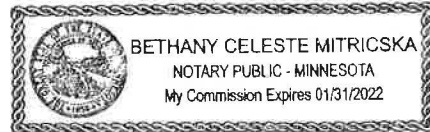
January 13, 2020  
Date

27-0556097  
Federal ID #

**State of Minnesota**  
**County of Dakota**

This record was acknowledged before me  
on January 13th 2020  
(date) 13th 2020 by Mark Peterson  
as the Chief Executive Officer

Stamp (if required):



Notarial Officer:  
Signature: Bethany C. Mitricska

Title of Office: notary public

My Commission Expires: 1/31/2022

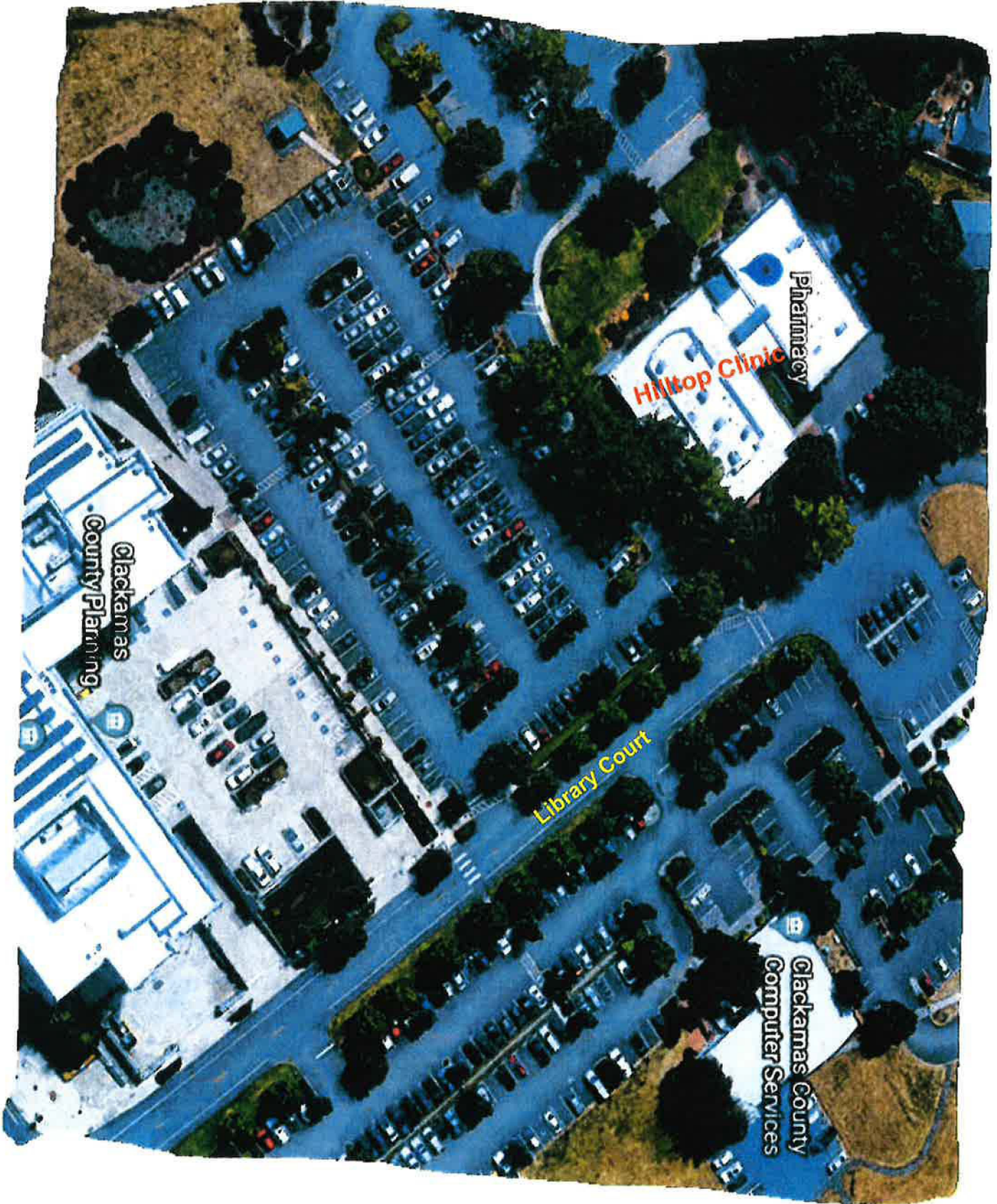


**EXHIBIT A**  
**DESCRIPTION OF PROPERTY**

**DESCRIPTION OF PROPERTY:**

The leased premises consists of 317 square feet of the Clinic and availability of five (5) adjoining parking spaces located at 998 Library Court, Oregon City, OR. Assessor's Map T3S, R2E, Section 05C, Tax Lot 00812 (the "Premises"). Google Earth Map of Premises is Exhibit B.

**EXHIBIT B**  
**GOOGLE EARTH MAP OF PROPERTY**



DRAFT

Approval of Previous Business Meeting Minutes:  
January 16

## **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, January 16, 2020 – 10:00 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT:** Chair Jim Bernard  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader

### **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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 Schrader: Second.

all those in favor/opposed:

Commissioner Reynolds: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 6-0.

### **I. HOUSING AUTHORITY CONSENT AGENDA**

1. Approval of Personal Services Contract with Carleton Hart Architecture (CHA) for Architecture and Engineering Services at 18000 Webster Rd, Gladstone - *HACC*

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. CITIZEN COMMUNICATION**

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

1. Charles Ormsby, Portland – Spoke on handicap accessibility and its potential impact with the addition of a new courthouse on the red soils campus.
2. Greg Chianello, Eagle Creek – Spoke on the non-conforming use of the Douglas Ridge Rifle Club and asked the Commissioners to have staff evaluate it.
3. Les Poole, Gladstone – Spoke on Chair Bernard's ethic case and the payment of legal fees and share concerns about the County Budget.

~Board Discussion~

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

1. Approval of a **Resolution No. 2020-03** for a Clackamas County Supplemental Budget (Greater Than Ten Percent and Budget Reduction) for Fiscal year 2019-2020

Haley Fish, Finance Deputy Director presented the report.

~Board Discussion~

Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

**MOTION:**

Commissioner Humberston: I move we Approve the Resolution for a Clackamas County Supplemental Budget (Greater Than Ten Percent and Budget Reduction) for Fiscal year 2019-2020

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

**IV. CONSENT AGENDA** Chair Bernard asked the Clerk to read the consent agenda by title only, then asked for a motion.

**MOTION:**

Commissioner Humberston: I move we approve the consent agenda.

Commissioner Schrader: 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 Agreement No. 18627 with Ride Connection, Inc. to Provide Funding for Rides Provided by Volunteer Drivers under the Vets Drive Vets Program – *Social Services*
2. Approval of a Revenue Contract Amendment for Professional Services with Oregon State University for Strengthening Families Program – *Children, Family and Community Connections*

**B. Department of Transportation & Development**

1. Approval of contract with the Oregon Department of Transportation – Transportation Safety Division for the purposes of ODOT-TSD – Safe Communities Grant Renewal
2. Approval of Intergovernmental Agreement between Clackamas County and the City of Canby for Traffic Signal Maintenance and Transportation Engineering Services

**C. Finance Department**

1. Approval of a **Resolution No. 2020-04** for a Clackamas County Supplemental Budget (Less Than Ten Percent) and Transfers for Fiscal Year 2019-2020

**D. Elected Officials**

1. Approval of the Clackamas County Investment Policy – *County Treasurer*

**E. Disaster Management**

1. Approval of Memorandum of Agreement between Clackamas County and the Colton School District for emergency/disaster related use of Colton Schools

**V. COUNTY ADMINISTRATOR UPDATE**

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

**VI. COMMISSIONERS COMMUNICATION**

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

**MEETING ADJOURNED 11:18 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>**



## John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045  
503 655-8431, FAX 503 650-8943, [www.co.clackamas.or.us/da/](http://www.co.clackamas.or.us/da/)

January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

### **Approval of** **2019-2021 Victims of Crime Act & Criminal Fine Account Non-Competitive Program Grant**

<b>Purpose/Outcomes</b>	The purpose of this non-competitive grant is to build the capacity of the District Attorney's Victim Assistance program, a long-standing program with a proven track record of service, in order to provide services to unserved victim groups.
<b>Dollar Amount and Fiscal Impact</b>	<p>2019-2021 VOCA Non-Competitive Program October 1, 2019 – September 30, 2021: \$1,152,547.08</p> <p>2019-2021 CFA Non-Competitive Program October 1, 2019 – September 30, 2021: \$369,136.00 (Requested)</p> <p>Offset (Unspent 2017-19): \$ 28,122.59 Total CFA Payment: \$341,013.41 Quarterly CFA Payments: \$ 42,626.68</p> <p>Additional Carry Over: \$ 18,456.80 Total CFA: \$359,470.21</p> <p>Grant revenue will be used to continue funding the Personnel Service costs for 7.00 FTE Victim Advocates. The remaining funds will be used to enhance current victim services as well as offset administrative costs and training costs as required by VOCA/CFA.</p> <p>The VOCA NC grant totaling \$1,152,547.08 requires a 25% in-kind match that will be met with grant monies from non-federal CFA funds. The VOCA NC match will be \$288,137.00. The CFA NC grant does not require a match.</p>
<b>Funding Source</b>	The Oregon Department of Justice Crime Victim's Services Division (CVSD) is the State Administrative Agency for the Victims of Crime Act (VOCA) grant programs as authorized by ORS 147.231. The Oregon Department of Justice Crime (DOJ) Victim Services Division has combined the VOCA NC and CFA into one grant application.
<b>Duration</b>	Effective October 1, 2019 - September 30, 2021
<b>Previous Board Action/Review</b>	The Clackamas County Board of County Commissioners previously approved the 2017-2019 VOCA and CFA Non-Competitive Grant Agreement VOCA/CFA-2017-ClackamasCo.DAVAP-00008
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. Respond to the emotional needs of crime victims.</li><li>2. Assist victims to stabilize their lives after a victimization.</li><li>3. Assist victims to understand/participate in the Criminal Justice System while invoking their statutory Victim Rights.</li><li>4. Provide victims with a measure of safety and security while restoring a violence free life.</li></ol>
<b>Contact Person</b>	Carrie Walker, Victim Assistance Director for the District Attorney

	(503) 655-8616
<b>Award No.</b>	VOCA/CFA-2019-ClackamasCo.DAVAP-00008

**BACKGROUND:**

As a result of the 1983 Oregon Legislature, ORS 147.227 mandates that county prosecution-based Victim Assistance Programs (VAP) statutorily mandate the following core services in assistance to victims of crime under the funding guidelines of the CFA (aka: Unitary Assessment) funding:

- Notify victim of their Victim Rights
- Inform victims, upon request, of the status of the criminal case involving the victim
- Provide advocacy for victims as they move through the criminal justice system
- Assist victims in the preparation of restitution documents
- Prepare victims for court hearings and encouraging & facilitating victim testimony
- Accompany victims to court hearings/Grand Jury/trials/sentencing
- Involve victims in the decision-making process in the criminal justice system
- Inform victims of the processes to request the return of property held as evidence
- Assist victims with the logistics related to court appearances
- Assist victims of crime in the preparation and submission of Crime Victims Compensation Program (CVCP) applications to the Department of Justice

The Victims of Crime Act of 1984 (VOCA) is the only federal grant program supporting direct assistance services to victims of all types of crimes. Federal VOCA funds are passed through the Oregon Department of Justice to victim service organizations throughout the state to extend and enhance services to victims of crime.

In addition to the mandated core services previously listed, the Clackamas County District Attorney's Office - Victim Assistance Program also provides essential support, often life-saving, services to victims of crime, such as:

- Immediate and long-term safety planning
- Crisis intervention and ongoing emotional support
- Assistance in obtaining protective orders
- Counseling and community resource referrals
- Crime scene response with law enforcement
- Call out response to hospital emergency departments for forensic medical exams
- Support for victims regardless of the prosecutorial merits of the case
- Advocacy while navigating the criminal justice system, both pre, and post-adjudication

**RECOMMENDATION:**

I respectfully recommend that the Clackamas County Board of County Commissioners approve this request to accept funds for the **2019-2021 Victims of Crime Act & Criminal Fine Account Non-Competitive Program Grant** and authorize District Attorney John S. Foote and Director of Finance Marc Gonzales to sign on behalf of the County.

Respectfully submitted,

John S. Foote  
District Attorney





**DEPARTMENT OF JUSTICE**  
CRIME VICTIM AND SURVIVOR SERVICES DIVISION

**MEMORANDUM**

DATE: October 1, 2019

TO: 2019-2021 VOCA and CFA Non-Competitive Grant Recipients

FROM: Diane Harvey, Fund Coordinator

Attached is your agency's 2019-2021 VOCA and CFA Non-Competitive Grant Agreement. Please download the entire document and have your authorized official sign the following pages:

- The final page of the Grant Agreement;
- Exhibit A – Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace Requirements;
- Exhibit B – Standard Assurances;
- Exhibit C – Single Audit Certification Letter;
- Exhibit D – Certification of Compliance with Regulations, Office for Civil Rights, Office of Justice Programs for Subgrants issued by the Oregon Department of Justice; and
- Exhibit E - Victims of Crime Act Special Conditions

Once the Grant Agreement is signed, please upload a copy of the signed Grant Agreement and Exhibits in the “Grantee Signed Grant Agreement” upload field on the “Grant Agreement Upload” page in your application in E-Grants. Once the documents are uploaded, you will need to **change the application status in CVSSD E-Grants to “Agreement Accepted”**.

Once the signed Grant Agreement and Exhibits have been uploaded in E-Grants, a copy of the Grant Agreement signed by both your authorized official and CVSSD Director Shannon Sivell will be uploaded into E-Grants and the status of your application will be changed to “Grant Awarded.” You will find the uploaded copy of your grant agreement under the “Agreement Upload” form on the Forms Menu of your application.

If you have any questions regarding this Grant Agreement, please contact Terri Johnson, Grant Specialist, at 503-378-4548.



**DEPARTMENT OF JUSTICE**  
Crime Victim and Survivor Services Division

**VICTIMS OF CRIME ACT  
CRIMINAL FINE ACCOUNT  
2019-2021 VOCA AND CFA NON-COMPETITIVE  
GRANT AWARD COVER SHEET**

<p><b>1. Applicant Agency's Name and Address:</b></p> <p>Clackamas County, acting by and through its District Attorney's Office 807 Main Street Oregon City, OR 97045-1845</p> <p>Contact Name: Ms. Carrie Walker Telephone: (503) 655-8616 E-mail: carriewal@co.clackamas.or.us</p>	<p><b>2. Special Conditions:</b> This grant project is approved subject to such conditions or limitations as set forth in the attached Grant Agreement.</p> <p><b>3. Statutory Authority for Grant:</b> <b>VOCA:</b> Federal Victims of Crime Act of 1984, as amended, 42 U.S.C. 1061 ET SEQ and ORS 147.231 (1) <b>CFA:</b> ORS 147.227 and OAR 137-078-0000</p>
<p><b>4. Award Number:</b> VOCA/CFA-2019-ClackamasCo.DAVAP-00008</p>	<p><b>5. Award Date:</b> October 1, 2019</p>
<p><b>6. Grantee Tax Identification Number:</b> 93-6002286</p>	<p><b>7. DUNS Number:</b> 096992656</p>
<p><b>8. Type of Party Receiving Funds:</b> x Subrecipient      <input type="checkbox"/> Contractor</p>	<p><b>9. Project Period:</b> October 1, 2019 - September 30, 2021</p>
<p><b>10. VOCA Category:</b> General Victim Services</p>	<p><b>11. Total VOCA Grant Award Amount / Match Amount:</b> \$1,152,547.08/ \$288,137.00</p>
<p><b>12. VOCA CFDA Number:</b> CFDA 16-575</p>	<p><b>13. Total CFA Grant Award Amount:</b> Year 1 CFA Request: \$184,568.00 Year 2 CFA Request: \$184,568.00 Carry Over: \$ 18,456.80 Total CFA Award: \$387,592.80</p> <p><b>14. Total CFA Payment Amounts:</b> Total CFA Request: \$369,136.00 Offset (Unspent 2017-19): \$ 28,122.59 Total CFA Payment: \$341,013.41 Quarterly CFA Payments: \$ 42,626.68</p>
<p><b>15. Indirect Cost Rate:</b> Waived</p>	<p><b>16. Total Federal Award Amount:</b> \$1,152,547.08</p>
<p><b>17. VOCA Annual Narrative Report Due Dates:</b></p> <p>October 31, 2020 October 31, 2021 (final)</p>	<p><b>18. VOCA and CFA Financial &amp; Outcome Measures Reports, VOCA PMT Report, and CFA Statistical Report Due Dates:</b></p> <p>January 31, 2020      January 31, 2021 April 30, 2020      April 30, 2021 July 20, 2020      July 20, 2021 October 31, 2020      October 31, 2021 (final)</p>
<p>This award is contingent upon the Grantee agreeing to the terms of award for the grant entitled "2019-2021 VOCA and CFA Non-Competitive Project Grant". The Grant Agreement must be signed by an authorized official in order to validate the acceptance of this award.</p>	

**OREGON DEPARTMENT OF JUSTICE  
VOCA AND CFA INTERGOVERNMENTAL GRANT AWARD**

**2019-2021 VOCA AND CFA NON-COMPETITIVE GRANT AGREEMENT  
VOCA/CFA-2019-ClackamasCo.DAVAP-00008**

**BETWEEN:** State of Oregon, acting by and through (Grantor)  
its Department of Justice,  
1162 Court St. NE  
Salem, Oregon 97301-4096

**AND:** Clackamas County, acting by and through its District Attorney's Office (Grantee)  
807 Main Street  
Oregon City, OR 97045-1845

**PROJECT START DATE:** October 1, 2019

**GRANT AWARD PROVISIONS**

**SECTION 1  
LEGAL BASIS OF AWARD**

Section 1.01. Legal Basis of Award.

- (a) Pursuant to the federal Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601 *et.seq.* (“VOCA”) and ORS 147.231(1), Grantor is authorized to enter into a grant agreement and to make an award from funds received under VOCA to Grantee for the purposes set forth herein.
- (b) Pursuant to ORS 137.143, a monetary obligation is imposed upon a convicted person. Those obligations are deposited into the Criminal Fine Account (“CFA”), and pursuant to ORS 147.227 (1), Grantor is authorized to enter into a Grant Agreement and to make an award, from funds in the Criminal Injuries Compensation Account that are received from the CFA, to Grantee for the purposes set forth herein.

Section 1.02. Agreement Parties. This Intergovernmental Grant Award Agreement, hereafter referred to as “Agreement”, is between Grantor and the forenamed Grantee.

Section 1.03. Effective Date. When all parties have duly executed this Agreement, and all necessary approvals have been obtained, this Agreement shall be effective, and have a Project start date of as of October 1, 2019.

Section 1.04. Agreement Documents. This Agreement includes the following documents listed in descending order of precedence and incorporated into this Agreement. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control.

- (a) This Agreement without any Exhibits.
- (b) Exhibits A through E as described in Section 2.04 (c).
- (c) Exhibit F.

- (d) The most current versions of the VOCA Handbook available at the Grantor’s web page under **VOCA Federal Rules and State Guidelines** <https://www.doj.state.or.us/crime-victims/grant-funds-programs/victims-of-crime-act-voca-assistance-fund/> (“VOCA Handbook”) and the CFA Grant Management Handbook available at the Grantor’s web page at <https://www.doj.state.or.us/crime-victims/grant-funds-programs/criminal-fine-account-cfa-funding/>, (“CFA Grant Management Handbook”).
- (e) 2019-2021 VOCA and CFA Non-Competitive Grant Funds Request for Applications for Awards (“VOCA and CFA RFA”).
- (f) Grantee’s VOCA and CFA Application from the VOCA and CFA Non-Competitive Application to include the general information for all Grantees, (Form A, Cover Page; Form D, Staff Roster; Form G, Crime Victim Compensation Information; Form H, Project Description; Form J, MOUs, Contracts and Subawards(if applicable); Form K, Program Income (if applicable); Form L, Client Feedback – Common Outcome Measures; and Form M, Attachments to Upload), the Grantee’s VOCA Application as defined in Section 1.04 (g) herein, and the Grantee’s CFA Application as defined in Section 1.04 (h) herein, are collectively referred to as the “Grantee’s VOCA and CFA Application.”
- (g) Grantee’s VOCA Application from the VOCA and CFA RFA to include the following and collectively referred to as “Grantee’s VOCA Application”
  - i. Form B, VOCA Services Checklist
  - ii. Form C, as applicable, Underserved Funds
  - iii. Forms N-R of the Grantee’s VOCA and CFA Application, the “VOCA Budget”
- (h) Grantee’s CFA Application from the VOCA and CFA RFA to include the following and collectively referred to as “Grantee’s CFA Application.”
  - (i) Form I, Policies and Procedures Narrative; and
  - (ii) Forms N, O, P, and R of the Grantee’s VOCA and CFA Application, the “CFA Budget”.

Section 1.05. Requirements for Pass-Through Entities. Information required by 2 CFR 200.331 for pass-through entities to include on all subawards is contained herein or available for VOCA at: [https://justice.oregon.gov/crime-victims/pdf/voca\\_pass\\_through\\_agreement\\_requirements.pdf](https://justice.oregon.gov/crime-victims/pdf/voca_pass_through_agreement_requirements.pdf).

## SECTION 2 GRANT AWARD

Section 2.01. Grant. In accordance with the terms and conditions of this Agreement, Grantor shall provide Grantee with the maximum not-to-exceed amount of **\$1,493,560.49** (the “Grant”) from VOCA and CFA, to financially support and assist Grantee’s implementation of the Grantee’s VOCA and CFA Application (as described in Section 1.04), and all supplemental documents submitted by Grantee to Grantor, all of which are incorporated herein by this reference and collectively referred to as the “Project”.

Fund	Year 1 Funds	Year 2 Funds	Offset-Unspent	Total Maximum Funds
VOCA	\$573,955.08	\$578,592.00	N/A	\$1,152,547.08
CFA	\$184,568.00	\$184,568.00	\$ 28,122.59	\$341,013.41

Section 2.02. Grant Award. In accordance with the terms and conditions of this Agreement, Grantee shall implement the VOCA and CFA as described in the Project.

Section 2.03. Disbursement of Grant Money. Subject to Sections 2.04, 2.05, and 2.06, Grantor shall disburse the Grant money to Grantee as follows:

- (a) For VOCA funds, disbursements shall be on a quarterly eligible expense reimbursement basis after this Agreement is fully executed by all necessary parties and all required approvals, if any, obtained and when Grantor has received from Grantee a quarterly financial report (as described in Section 5.07) appropriately describing the expenses for which the reimbursement is claimed until the earlier of (i) the entire Grant amount has been disbursed, (ii) the Availability Termination Date as defined in Section 2.06 or (iii) this Agreement terminates as provided herein.
- (b) For CFA funds, the first installment shall be disbursed as soon as practicable after this Agreement is fully executed by all necessary parties and all required approvals, if any, obtained. Thereafter the Grant shall be disbursed in amounts to be determined by Grantor on or about each following January 31, April 30, July 31, October 31 until the earlier of (i) the entire Grant amount has been disbursed, (ii) the Availability Termination Date as defined in Section 2.06 or (iii) this Agreement terminates as provided herein

Section 2.04. Conditions Precedent to Each Disbursement. Grantor's obligation to disburse Grant money to Grantee pursuant to Section 2.03 is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- (a) Grantor has received sufficient federal and state funds under VOCA, CFA and the Criminal Injuries Compensation Account to allow the Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement;
- (b) Grantor, the CFA and the Criminal Injuries Compensation Account has each received sufficient funding appropriations, limitations, allotments, or other expenditure authorizations to allow Grantor, in the reasonable exercise of its administrative discretion, to make the disbursement;
- (c) Grantor has received a copy of **Exhibit A**, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, **Exhibit B**, Standard Assurances, **Exhibit C**, Single Audit Certification Letter, **Exhibit D**, Certification of Compliance with Regulations, Office for Civil Rights, Office of Justice Programs for Subgrants Issued by the Oregon Department of Justice, **Exhibit E**, Victims of Crime Act Special Conditions, and **Exhibit F**, Subcontractor Insurance Requirements, all in the form attached hereto and incorporated herein by this reference, duly executed and delivered on behalf of Grantee by an authorized official of Grantee;
- (d) Grantee certifies insurance coverage in full force for the duration of this Agreement;
- (e) If Grantee expends \$750,000 or more in federal funds from all sources Grantee has submitted the most recent single organization-wide audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F;
- (f) If Grantee agency does not claim an exemption from the Equal Employment Opportunity Plan ("EEO") requirement (Grantee is an educational, medical or non-profit institution or an Indian Tribe; or Grantee has less than 50 employees; or Grantee was awarded less than \$25,000 in

federal U.S. Department of Justice funds), Grantee has prepared, maintained on file, submitted to the Office for Civil Rights for review (if receiving a single award of \$500,000 or more), and implemented an EEOP;

- (g) Grantee is current in all reporting requirements of all active or prior VOCA grants, including, but not limited to:
  - (i) Grantor has received from Grantee a quarterly financial report (as described in Section 5.07) appropriately describing the expenses for which the reimbursement is claimed;
  - (ii) Grantor has received the completed Annual VOCA Narrative Report as described Section 5.07 and in the most recent version of the VOCA Grant Management Handbook;
  - (iii) Grantor has received the completed VOCA Performance Measurement Tool report as described in Section 5.07; and
  - (iii) Grantor has received the Client Feedback Form and Outcome Measure Report as described in Section 5.07.
- (h) Grantee is current in all reporting requirements of all active or prior CFA grants, including, but not limited to:
  - i. Grantor has received from Grantee a quarterly financial report as described in Section 5.07 appropriately describing the expenses for the reporting period; and
  - ii. Grantor has received from Grantee the completed CFA quarterly statistical reports as described in Section 5.07 and in the most recent version of the CFA Grant Management Handbook.
- (i) No default as described in Section 6.03 has occurred; and
- (j) Grantee's representations and warranties set forth in Section 4 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

Section 2.05. Supplemental Grant Agreement Conditions. If Grantee fails to satisfy any of the following conditions, Grantor may withhold disbursement:

None

Section 2.06. Grant Availability Termination. The availability of Grant money under this Agreement and Grantor's obligation to disburse Grant money pursuant to Section 2.03 shall end on **September 30, 2021** (the "Availability Termination Date"). Grantor will not disburse any Grant money for expenses which Grantee incurs after the Availability Termination Date. Unless extended or terminated earlier in accordance with its terms, this Agreement shall terminate when Grantor accepts Grantee's completed reports, as described in Section 5.07, or on **September 30, 2021**, whichever date occurs first, exclusive of financial and narrative reports which are due no later than 30 days after the Availability Termination Dates. Agreement termination shall not extinguish or prejudice Grantor's right to enforce this Agreement with respect to any default by Grantee that has not been cured.

### **SECTION 3 USES OF GRANT**

Section 3.01. Eligible Uses of Grant. Grantee's use of the Grant money is limited to those expenditures necessary to implement the Project. All Grant money must be for expenses that are eligible under applicable federal and State of Oregon law, and as described in the most recent versions of the VOCA Handbook and the CFA Grant Management Handbook. Furthermore, Grantee's expenditure of Grant

money must be in accordance with the Project VOCA Budget set forth in the Grantee's VOCA Application and Grantee's CFA Application.

Section 3.02. Ineligible Uses of Grant. Notwithstanding Section 3.01, Grantee shall not use the Grant money for (i) indirect costs defined in 2 CFR 200.56 in excess of a federally-approved Negotiated Indirect Cost Rate, or in excess of ten percent (10%) if Grantee does not have a federally approved Negotiated Indirect Cost Rate, (ii) unallowable costs as listed in 2 CFR Part 200 and OAR 137-078-0041 (2)(a), (iii) to provide services to persons other than those described in Section 5.18(a), (iv) for any purpose prohibited by any provision of this Agreement, or (v) to retire any debt or to reimburse any person or entity for expenditures made or expenses incurred prior to the date of this Agreement. A detailed list of unallowable costs is referenced in the most recent version of the VOCA Handbook and can be found on the Crime Victim and Survivor Services Division ("CVSSD") website at <https://www.doj.state.or.us/crime-victims/grant-funds-programs/victims-of-crime-act-voca-assistance-fund/#vocafederalrules>. A detailed list of unallowable CFA costs can be found in most recent version of the CFA Grant Management Handbook.

Section 3.03. Unexpended Grant Money. Any VOCA Grant money disbursed to Grantee, or any interest earned by Grantee on the Grant money, that is not expended by Grantee in accordance with this Agreement by the Availability Termination Date or the date this Agreement is terminated shall be returned to Grantor. Grantee may, at its option, satisfy its obligation to return unexpended federal funds under this Section 3.03 by paying to Grantor the amount of unexpended federal funds or permitting Grantor to recover the amount of the unexpended federal funds from future payments to Grantee from Grantor. If Grantee fails to return the amount of the unexpended federal funds within fifteen (15) days after the Availability Termination Date or the date this Agreement is terminated, Grantee shall be deemed to have elected the deduction option and Grantor may deduct the amount demanded from any future payment of the Grant money from Grantor to Grantee, including but not limited to, any payment of federal funds to Grantee from Grantor under this Agreement and any payment of federal funds to Grantee from Grantor under any contract or agreement, present or future, between Grantor and Grantee.

If any CFA Grant money disbursed to Grantee, or any interest earned by Grantee on the CFA Grant money, is not expended by Grantee in accordance with this Agreement by the earlier of the Availability Termination Date or the date this Agreement is terminated, then at Grantor's discretion: (i) Grantee may retain a portion or all of such money with a demonstration satisfactory to Grantor of how it will be incorporated into the new fiscal year program or used in a subsequent grant award, or (ii) some or all of the unexpended CFA Grant money shall be returned to Grantor. Grantee may, at its option, satisfy its obligation to return unexpended CFA funds under this Section 3.03 by paying to Grantor the amount of unexpended funds or permitting Grantor to recover the amount of the unexpended funds from future payments to Grantee from Grantor.

#### **SECTION 4 GRANTEE'S REPRESENTATIONS AND WARRANTIES**

Grantee represents and warrants to Grantor as follows:

Section 4.01. Existence and Power. Grantee is a political subdivision of the State of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.

Section 4.02. Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency, any provision of Grantee's articles of incorporation or bylaws, or any provision of Grantee's charter or other organizational document and (c) do not and will not result in the

breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.

Section 4.03. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.

Section 4.04. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

## SECTION 5 GRANTEE'S AGREEMENTS

Section 5.01. Project Commencement. Grantee shall cause the Project to be operational no later than 60 days from the date of this Agreement. If the Project is not operational by that date, Grantee must submit a letter to Grantor describing steps taken to initiate the Project, reasons for delay, and the expected Project starting date. If the Project is not operational within 90 days of the date of this Agreement, the Grantee must submit a second letter explaining the additional delay in implementation. The Grantor may, after reviewing the circumstances, consider the Grantee in default in accordance with Section 6.03 and may terminate the Agreement in accordance with Section 6.02.

Section 5.02. Project Completion. Grantee shall complete the Project no later than **September 30, 2021** provided, however, that if the full amount of the Grant is not available because one or both of the conditions set forth in Sections 2.04(a) and (b) are not satisfied, Grantee shall not be required to complete the Project.

Section 5.03. Federal Assurances and Certifications. Grantee will comply with all of federal requirements, including, but not limited to, those set forth in Exhibits A – E (Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements; Standard Assurances; Single Audit Certification Letter; Certification of Compliance with Regulations, Office for Civil Rights, Office of Justice Programs for Subgrants Issued by the Oregon Department of Justice; and Victims of Crime Act Special Conditions) attached hereto.

Section 5.04. Civil Rights and Victim Services.

- (a) Grantee shall collect and maintain statutorily required civil rights statistics on victim services as described in the most recent version of the VOCA Grant Management Handbook.
- (b) Grantee shall comply with the following Oregon Department of Justice, CVSSD policies for addressing discrimination complaints,
  - (i) *Procedures for Responding to Discrimination Complaints from Employees of the Oregon Department of Justice, Crime Victim and Survivor Services Division's Subrecipients under U.S. Department of Justice Grant Programs*, available under Policies on Grantor's Civil Rights Requirements web page at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>; and
  - (ii) *Procedures for Responding to Discrimination Complaints from Clients, Customers, Program Participants, or Consumers of the Oregon Department of Justice, Crime Victim and Survivor Services Division and the Oregon Department of Justice, Crime Victim and Survivor Services Division Subrecipients* available under Policies on Grantor's Civil Rights Requirements web page at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>.



- (c) Grantee shall complete and certify completion of civil rights training as described under Training on Grantor's Civil Rights Requirements web page available at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>. Grantee shall conduct periodic training for Grantee employees on the procedures set forth in the policies referenced in subsection (b) of this Section.
- (d) Grantee shall prominently display at locations open to the public and shall include on publications, websites, posters and informational materials a notification that Grantee is prohibited from discriminating on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, age or disability and the procedures for filing a complaint of discrimination as described in the "Civil Rights Fact Sheet" developed by Grantor and available under Notification Regarding Program Availability on Grantor's Civil Rights Requirements web page at <https://www.doj.state.or.us/crime-victims/for-grantees/civil-rights-requirements/>.

Section 5.05. Volunteers. Grantee organization will use volunteers in the implementation of the Project unless a waiver has been obtained from Grantor.

Section 5.06. Training Requirements.

- (a) Grantee shall ensure that direct service staff, volunteers and members of the board of directors, or governing body or designated leaders with direct responsibility for domestic violence and sexual assault programs attend training that meets the requirements adopted by the Department of Human Services ("DHS") Advisory Committee. The *Training Requirements for Staff, Volunteers and Leadership of Non-Profit Organizations and Tribal Nations Serving Survivors of Domestic Violence, Sexual Assault, Dating Violence and Stalking* are available on the Grantor's web page at: <https://www.doj.state.or.us/crime-victims/grant-funds-programs/oregon-domestic-and-sexual-violence-services-odsvs-fund/>. The recommended training format is group training, but Grantees may choose to use the Oregon Coalition Against Domestic & Sexual Violence ("OCADSV") web-based advocacy training course to supplement in-person training: <http://www.ocadsv.org/resources/online-core-advocacy-training>.
- (b) Grantee shall ensure that VOCA-funded staff providing direct services in City and County Government-based agencies, Child Abuse Intervention Centers, and Special Population organizations attend the Oregon Basic State Victim Assistance Academy (SVAA) training: [https://law.lclark.edu/centers/national\\_crime\\_victim\\_law\\_institute/projects/OR\\_SVAA/basic.php](https://law.lclark.edu/centers/national_crime_victim_law_institute/projects/OR_SVAA/basic.php). Child Abuse Intervention Centers and Special Population organizations may alternatively submit a 40-hour training plan for CVSSD approval that covers topics relevant to the VOCA-funded staff position(s), which may be from SVAA, DHS Advisory Committee adopted training requirements and OCADSV web-based advocate training described in subsection (a) of this Section, VAT *Online* described in subsection (c) of this Section, and additional population-specific topics.
- (c) Volunteers and interns providing VOCA-funded direct services in City and County Government-based agencies, Child Abuse Intervention Centers, and Special Population organizations are required to successfully complete the Office for Victims of Crime (OVC) Victims Assistance Training *Online* (VAT *Online*) or a training program that minimally covers the topics included in VAT *Online*: [https://www.ovcttac.gov/views/TrainingMaterials/dspOnline\\_VATOnline.cfm](https://www.ovcttac.gov/views/TrainingMaterials/dspOnline_VATOnline.cfm). Alternatively, Child Abuse Intervention Centers and Special Population organizations may submit a training plan for CVSSD approval that covers topics relevant to volunteer position(s), which may be from VAT *Online*, DHS Advisory Committee adopted training requirements and OCADSV web-based advocate training described in subsection (a) of this Section, SVAA described in subsection (b) of this Section, and additional population-specific topics.

- (d) At least one grant-funded staff providing direct services is required to attend the CVSSD-sponsored Crime Victims Compensation Training at least once every four years and ensure all direct service staff are appropriately trained.
- (e) Grantee shall notify Grantor when any staff training is completed by updating the Staff Roster in the CVSSD web-based grant application and reporting system (“CVSSD E-Grants”). Grantee shall document training completed by volunteers, interns and members of the board of directors, governing body or designated leaders.
- (f) Grantee shall attend all appropriate Grantor-sponsored training unless specific written permission excusing attendance has been obtained from Grantor.

Section 5.07. Reporting Requirements.

- (a) Grantee shall submit the following reports as described in the most recent version of the VOCA Grant Management Handbook:
  - i. Quarterly Client Feedback Form and Outcome Measures Report. Grantee agrees to distribute a client feedback form to all victims served by the Project, as deemed appropriate by the Project. The client feedback form must include the three CVSSD Common Outcome Measures as designated by the Grantor in the most recent version of the VOCA Grant Management Handbook as well as collect other data as requested by the Grantor. Grantee shall encourage return of the client feedback form with a survey completion and return rate goal of at least 10%. Grantee must report on the responses quarterly no later than 30 days after the end of the calendar quarters ending September 30, December 31, and March 31, and no later than July 20 for the calendar quarter ending June 30. Grantee shall use forms satisfactory to Grantor.
  - ii. Quarterly Financial Reports. Grantee shall provide Grantor with quarterly financial reports no later than 30 days after the end of the calendar quarters ending December 31, March 31, and September 30, and no later than July 20 for the calendar quarter ending June 30.
  - iii. Quarterly Performance Measurement Tool Reports. Grantee shall provide Grantor with quarterly performance measurement tool reports no later than 30 days after the end of the calendar quarters ending December 31, March 31, and September 30, and no later than July 20 for the calendar quarter ending June 30.
  - iv. Annual Narrative Reports. No later than 31 days after the end of each calendar quarter ending September 30, Grantee shall prepare and submit to Grantor an Annual Narrative Report for the VOCA Non-Competitive Project covering the reporting period just ended from October 1 through September 30.
- (b) Grantee shall submit the following reports as described in the CFA Grant Management Handbook:
  - i. Quarterly Client Feedback Form and Outcome Measures Report. Grantee agrees to distribute a client feedback form to all victims served by the Project, as deemed appropriate by the Project. The client feedback form must include the three CVSSD Common Outcome Measures as designated by the Grantor in the most recent version of the VOCA Grant Management Handbook as well as collect other data as requested by the Grantor. Grantee shall encourage return of the client feedback form with a survey

completion and return rate goal of at least 10%. Grantee must report on the responses quarterly no later than 30 days after the end of the calendar quarters ending September 30, December 31, and March 31, and no later than July 20 for the calendar quarter ending June 30. Grantee shall use forms satisfactory to Grantor.

- ii. Quarterly Financial Reports. No later than 30 days after the end of the calendar quarters ending, September 30, December 31, March 31, and no later than July 20 for the calendar quarters ending June 30, Grantee shall submit through CVSSD E-Grants to Grantor quarterly financial reports.
- iii. Quarterly Statistical Reports. No later than 31 days after the end of the calendar quarters ending September 30, December 31, March 31, and no later than July 20 for the calendar quarters ending June 30, Grantee shall prepare and submit through CVSSD E-Grants to Grantor quarterly statistical reports.

Section 5.08. Procurement Standards. Grantee shall follow the same policies and procedures it uses for procurement from any other state or federal funds. Grantee shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable federal and state law and standards as noted in 2 CFR 200.317 through 2 CFR 200.326.

Grantee shall not discriminate, in procurement transactions, against any person or entity on the basis of such person or entity's status as an "associate of the federal government" (or on the basis of such person or entity's status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by United States Department of Justice ("USDOJ"). The term "associate of the federal government" means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government in undertaking any work, project, or activity for or on behalf of the federal government. Further details of this requirement can be found in Exhibit E: Victims of Crime Act Special Conditions, and are incorporated by reference here.

Section 5.09. Matching Funds. Grantee shall obtain and expend on the Project matching funds as identified in the Budget and Narrative. Grantee is required to provide matching funds equal to 25% of the Grant funds received unless a match waiver has been requested and approved.

Section 5.10. Program Income. In order to add program income to an award, Grantee (and any subrecipient at any tier) must seek approval from Grantor prior to generating any program income. Without prior approval, program income must be deducted from total allowable costs to determine the net allowable costs. Any program income added to an award must be used to support activities that were approved in the budget and follow the conditions of the Agreement. Any program income generated by the Grantee must be reported on the quarterly Financial Report in accordance with the addition alternative. Failure to comply with these requirements may result in Grantor withholding award funds, disallowing costs, or suspending or terminating the award. The Grantee must comply with all program income requirements contained in the Program Income Policy available on the Grantor's web page under Grant Guidance Documents: <https://www.doj.state.or.us/crime-victims/for-grantees/grant-guidance-documents/>.

Section 5.11. Nondisclosure of Confidential or Private Information. In order to ensure the safety of adult, youth, and child victims and their families, Grantee shall protect the confidentiality and privacy of persons receiving services.

- (a) The term "personally identifying information", "individual information", or "personal information" means individually identifying information for or about an individual victim, including (1) a first and last name; (2) a home or other physical address; (3) contact information

(including a postal, e-mail or Internet protocol address, or telephone or facsimile number); (4) a social security number; and (5) any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

- (b) Grantee may share (1) non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying information in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements; (2) court-generated information and law-enforcement generated information contained in secure, governmental registries for protection order enforcement purposes; and (3) law-enforcement and prosecution-generated information necessary for law enforcement and prosecution purposes.
- (c) Grantee shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through Grantee's programs, regardless of whether the information has been encoded, encrypted, hashed or otherwise protected. This applies to:
  - (i) Information being requested for a Federal, State, tribal, or territorial grant program; and
  - (ii) Disclosure from the Grantee's organization, agency, or government, including victim and non-victim services divisions or components and leadership of the organization, agency or government; and
  - (iii) Disclosure from victim services divisions or components of an organization, agency, or government to the leadership of the organization, agency, or government (e.g., executive director or chief executive). Such executive shall have access without releases only in extraordinary and rare circumstances. Such circumstances do not include routine monitoring and supervision.
- (d) Personally identifying information or individual information collected in connection with services requested, utilized, or denied through Grantee's programs may not be released except under the following circumstances:
  - (i) The victim signs a release as provided below;
  - (ii) Release is compelled by statutory mandate, which includes mandatory child abuse reporting laws; or
  - (iii) Release is compelled by court mandate, which includes a legal mandate created by case law, such as a common-law duty to warn.
- (e) Victim releases must meet the following criteria:
  - (i) Releases must be informed, written, reasonably time-limited. Grantee may not use a blanket release and must specify the scope and limited circumstances of any disclosure. At a minimum, Grantee must: discuss with the victim why the information might be shared, who would have access to the information, and what information could be shared under the release; reach agreement with the victim about what information would be shared and with whom; and record the agreement about the scope of the release. A release must specify the duration for which information may be shared. The reasonableness of this time period will depend on the specific situation.

- (ii) Grantee may not require consent to release of information as a condition of service.
- (iii) Releases must be signed by the victim unless the victim is a minor who lacks the capacity to consent to release or is a legally incapacitated person and has a court-appointed guardian. Except as provided in paragraph (c)(iv) of this section, in the case of an unemancipated minor, the release must be signed by the minor and a parent or guardian; in the case of a legally incapacitated person, it must be signed by a legally-appointed guardian. Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the other parent of the minor. If a minor is incapable of knowingly consenting, the parent or guardian may provide consent. If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate.
- (iv) If the minor or person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may consent to release information without additional consent.
- (f) If release of information described in the previous paragraph is compelled by statutory or court mandate, Grantee shall make reasonable attempts to provide notice to victims affected by the disclosure of information; and Grantee shall take steps necessary to protect the privacy and safety of the persons affected by the release of the information.
- (g) Fatality Reviews. Grantee may share personally identifying information or individual information that is collected as described in paragraph (a) of this section about deceased victims being sought for a fatality review to the extent permitted by their jurisdiction's law and only if the following conditions are met:
  - (i) The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability;
  - (ii) The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team;
  - (iii) The Grantee makes a reasonable effort to get a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting; and
  - (iv) The information released is limited to that which is necessary for the purposes of the fatality review.
- (h) Breach of Personally Identifying Information. Grantee is responsible for taking reasonable efforts to prevent unauthorized releases of personally identifying information or individual information that is collected as described in paragraph (a) of this section. The Grantee (and any subgrantee at any tier) must have written procedures in place to respond in the event of an actual or imminent breach (as defined in OMB M-17-12) if it (or a subgrantee), 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of personally identifiable information (PII) (as defined in 2 C.F.R. 200.79) within the scope of a grant-funded program or activity, or 2) uses or operates a Federal information system (as defined in OMB Circular A-130). The Grantee's breach procedures must include a requirement to report actual or imminent breach of personally identifying information to a CVSSD Fund Coordinator no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

- (i) Grantee shall notify the Grantor promptly after receiving a request from the media for information regarding a recipient of services funded with Grant money.

Section 5.12. Criminal History Verification. Grantee shall obtain a criminal history record check on any employee, potential employee or volunteer working with victims of crime as follows:

- (a) By having the applicant as a condition of employment or volunteer service, apply for and receive a criminal history check from a local Oregon State Police Office and furnish a copy thereof to Grantee; or
- (b) As the employer, by contacting a local Oregon State Police office for an “Oregon only” criminal history check on the applicant/employee/volunteer; or
- (c) By use of another method of criminal history verification that is at least as comprehensive as those described in sections (a) and (b) above.

A criminal record check will indicate convictions of child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee or volunteer scheduled to work with victims of crime.

Grantee shall develop a policy or procedures to review criminal arrests or convictions of employees, potential employees or volunteers. The review will examine: (1) the severity and nature of the crime; (2) the number of criminal offenses; (3) the time elapsed since commission of the crime; (4) the circumstances surrounding the crime; (5) the subject individual’s participation in counseling, therapy, education or employment evidencing rehabilitation or a change in behavior; and (6) the police or arrest report confirming the subject individual’s explanation of the crime.

Grantee shall determine after receiving the criminal history check whether the employee, potential employee or volunteer has been convicted of one of the crimes described in this Section, and whether based upon the conviction the person poses a risk to working safely with victims of crime. If Grantee intends to hire or retain the employee, potential employee or volunteer, Grantee shall confirm in writing the reasons for hiring or retaining the individual. These reasons shall address how the applicant/employee/volunteer is presently suitable or able to work with victims of crime in a safe and trustworthy manner, based on the policy or procedure described in the preceding paragraph of this Section. Grantee will place this explanation, along with the applicant/employee/volunteer’s criminal history check, in the employee/volunteer personnel file for permanent retention.

Section 5.13. Determination of Suitability to Interact with Participating Minors. If the purpose of some or all of the activities to be carried out under the VOCA project is to benefit a set of individuals under 18 years of age, Grantee must make determinations of suitability, in advance, before individuals may interact with participating minors, regardless of the individual’s employment status. Details of this requirement can be found on the Office of Justice Programs website at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

Section 5.14. Employment Eligibility Verification for Hiring. Grantee shall ensure that, as part of the hiring process for any position funded with VOCA funds, they will properly verify the employment eligibility of the individual who is being hired, consistent with provisions of 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens. Grantee must:

- (a) Notify all staff involved in the hiring process of this requirement;

- (b) Maintain records of all employment eligibility verifications pertinent to compliance with this requirement in accordance with Form I-9 record retention requirements.

For purposes of satisfying the requirement to verify employment eligibility, Grantee may choose to participate in, and use, E-Verify ([www.e-verify.gov](http://www.e-verify.gov)), provided an appropriate person authorized to act on behalf of the Grantee uses E-Verify to confirm employment eligibility for each hiring for a position that is or will be funded with VOCA funds.

Details of this requirement can be found in Exhibit E: Victims of Crime Act Special Conditions, and are incorporated by reference here.

#### Section 5.15. Maintenance, Retention and Access to Records; Audits.

- (a) Maintenance and Retention of Records. Grantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the standards of the Grants Financial Management Division (GFMD) and the Office of the Chief Financial Officer (OCFO) set forth in the most recent version of the Office of Justice Programs (OJP) DOJ Grants Financial Guide, including 2 CFR Part 200, subpart F (if applicable), and 2 CFR Part 2800. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this Grant shall be retained by the Grantee for a minimum of six years following termination or expiration of this Agreement for purposes of State of Oregon or federal examination and audit provided, however, that if there is any audit issue, dispute, claim or litigation relating to this Agreement or the Grant, Grantee shall retain and keep accessible the books of account and records until the audit issue, dispute, claim or litigation has been finally concluded or resolved. It is the responsibility of the Grantee to obtain a copy of the DOJ Grants Financial Guide from the OCFO available at <https://ojp.gov/financialguide/DOJ/index.htm> and apprise itself of all rules and regulations set forth.
- (b) Access to Records. Oregon Department of Justice/CVSSD, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO) or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Grantee and any contractors or subcontractors of Grantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
- (c) Audits. Grantee shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law. If Grantee expends \$750,000 or more in federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Part 200, subpart F. Copies (electronic or URL address) of all audits must be submitted to CVSSD within 30 days of completion. If Grantee expends less than \$750,000 in its fiscal year, Grantee is exempt from federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in subsection (b) of this Section.
- (d) Audit Costs. Audit costs for audits not required in accordance with 2 CFR Part 200, subpart F are unallowable. If Grantee did not expend \$750,000 or more in federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to this Grant.

Section 5.16. Compliance with Laws. Grantee shall comply with (and when required cause its subgrantees to comply with) all applicable federal, state, and local laws, regulations, executive orders and ordinances related to expenditure of the Grant money and the activities financed with the Grant money.

Without limiting the generality of the foregoing, Grantee expressly agrees to comply with:

- (a) **Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.** (prohibiting discrimination in programs or activities on the basis of race, color, and national origin) and the **Omnibus Crime Control and Safe Streets Act of 1968, as amended, 34 U.S.C. §10228(c)(1)** (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, age, disability, and sex in the delivery of services).
  - (i) These laws prohibit discrimination on the basis of race, color, religion, national origin, age, disability, and sex in the delivery of services.
  - (ii) In the event a federal or state court, or a federal or state administrative agency, makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, age, or disability against the Grantee, the Grantee shall forward a copy of the finding to the Oregon Department of Justice, CVSSD, 1162 Court Street N.E., Salem, OR 97301-4096 and the Office for Civil Rights, OJP, U.S.D.O.J. 810 7<sup>th</sup> Street N.W., Washington D.C. 20531.
- (b) **Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et. Seq.** (prohibiting discrimination in employment practices or in programs and activities on the basis of disability).
- (c) **Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131** and ORS 659.425 (prohibiting discrimination in services, programs, and activities on the basis of disability), the **Age Discrimination Act of 1975, 42 U.S.C. § 6101-07** (prohibiting discrimination in programs and activities on the basis of age); and **Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq.** (prohibiting discrimination in educational programs or activities on the basis of gender); as well as all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws prohibit discrimination on the basis of race, color, religion, national origin and sex in the delivery of services. In the event a federal or state court, or a federal or state administrative agency, makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, age, or disability, against the Grantee, the Grantee shall forward a copy of the finding to the Oregon Department of Justice, Crime Victim and Survivor Services Division, 1162 Court Street N.E., Salem, Oregon 97301-4096.
- (d) The **Federal Funding Accountability and Transparency Act (FFATA) of 2006**, which provisions include, but may not be limited to, a requirement for Grantee to have a Data Universal Numbering System (DUNS) number and maintain a current registration in the System for Award Management (SAM) database.
- (e) **Services to Limited English-Proficient Persons (LEP)** which includes national origin discrimination on the basis of limited English proficiency. Grantee is required to take reasonable steps to ensure that LEP persons have meaningful access to its programs. Meaningful access may entail providing language assistance services, including interpretation and translation services, where necessary. Grantee is encouraged to consider the need for language services for LEP persons served or encountered both in developing its proposals and budgets and in conducting its programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. The USDOJ has issued guidance for grantees to assist them in complying with Title VI requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov).
- (f) **Partnerships with Faith-Based and Other Neighborhood Organizations**, codified at 28 C.F.R. Part 38, and Executive Order 13279, regarding Equal Protection of the Laws for Faith-



Based and Community Organizations(ensuring equal treatment for faith-based organizations and non-discrimination of beneficiaries on the basis of religious belief) ensures that no organization will be discriminated against in a USDOJ funded program on the basis of religion and that services are available to all regardless of religion. Executive Order 13279 ensures a level playing field for the participation of faith-based organizations as well as other community organizations.

- (g) All regulations and administrative rules established pursuant to the foregoing laws, and other regulations as provided at [www.ojp.usdoj.gov/ocr](http://www.ojp.usdoj.gov/ocr).
- (h) The **Uniform Administrative Requirements, Cost Principles, and Audit Requirements** in 2 CFR Part 200, as adopted and supplemented by the USDOJ in 2 CFR Part 2800.
- (i) Further, Grantee shall not retaliate against any individual for taking action or participating in action to secure rights protected by these laws and agrees to report any complaints, lawsuits, or findings from a federal or state court or a federal or state administrative agency to the Oregon Department of Justice, CVSSD, 1162 Court Street N.E., Salem, OR 97301-4096 and the Office for Civil Rights, OJP, U.S.D.O.J. 810 7<sup>th</sup> Street N.W., Washington D.C. 20531.

Section 5.17. VOCA Eligibility Requirements. Grantee will comply with the federal eligibility criteria established by the Victims of Crime Act of 1984, as amended, and the Office of Justice Programs Financial Guide, in order to receive VOCA funds as described in the Grantee's VOCA Application.

Section 5.18. Assurances. The Grantee assures that it will:

- (a) Utilize VOCA funds only to provide authorized services to victims of crime;
- (b) Obtain prior approval from Grantor for:
  - 1. Movement of funds
    - i. For grant awards totaling \$500,000 or less: Movement of funds that total more than \$3,000 in the Personnel, Services and Supplies, and/or Other Services categories;
    - ii. For grant awards totaling more than \$500,000: Movement of funds that total more than \$5,000 in the Personnel, Services and Supplies, and/or Other Services categories; OR
  - 2. Adding a budget category or line item that did not exist in the original budget; OR
  - 3. Deleting an existing category.
- (c) Comply with the requirements of the current version of the Office of Justice Programs, Financial Guide available at: <https://ojp.gov/financialguide/DOJ/index.htm> ; and
- (d) Comply with the terms of the most recent versions of the VOCA Grant Management Handbook and the CFA Grant Management Handbook.

## SECTION 6 TERMINATION AND DEFAULT

Section 6.01. Mutual Termination. This Agreement may be terminated at any time upon mutual written agreement between the Parties.

Section 6.02. Termination by Either Party or by Grantor. Either party may terminate this Agreement, for any reason, upon 30 days advance written notice to the other party. In addition, Grantor may terminate this Agreement effective immediately upon written notice to Grantee, or effective on such later date as

may be established by Grantor in such notice, under any of the following circumstances: (a) Grantor fails to receive sufficient appropriations or other expenditure authorization to allow Grantor, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (b) Grantor fails to receive sufficient federal funds under VOCA to allow Grantor, in the reasonable exercise of its administrative discretion, to continue making payments under this Agreement, (c) there is a change in federal or state laws, rules, regulations or guidelines so that the Project funded by this Agreement is no longer eligible for funding, or (d) in accordance with Section 6.05.

Section 6.03. **Effect of Termination.** Upon receiving a notice of termination of this Agreement or upon issuing a notice of termination to the Grantor, Grantee shall immediately cease all activities under this Agreement unless, in a notice issued by Grantor, Grantor expressly directs otherwise.

Section 6.04. Default. Either party shall be in default under this Agreement upon the occurrence of any of the following events:

- (a) Either party shall be in default if either party fails to perform, observe or discharge any of its covenants, agreements or obligations contained herein or in any Exhibit attached hereto; or
- (b) Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by Grantor to measure progress on the Project, the expenditure of Grant money or the performance by Grantee is untrue in any material respect when made; or
- (c) Grantee (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all of its property, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due, (iii) makes a general assignment for the benefit of its creditors, (iv) is adjudicated as bankrupt or insolvent, (v) commences a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect), or (viii) takes any action for the purpose of effecting any of the foregoing; or
- (d) A proceeding or case is commenced, without the application or consent of Grantee, in any court of competent jurisdiction, seeking (i) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of Grantee, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of Grantee or of all or any substantial part of its assets, or (iii) similar relief in respect to Grantee under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against Grantee is entered in an involuntary case under the federal Bankruptcy Code (as now or hereafter in effect).

Section 6.05. Remedies Upon Default. If Grantee's default is not cured within fifteen (15) days of written notice thereof to Grantee from Grantor or such longer period as Grantor may authorize in its sole discretion, Grantor may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement, return of all or a portion of the Grant money, payment of interest earned on the Grant money, and declaration of ineligibility for the receipt of future VOCA awards. If, as a result of Grantee's default, Grantor demands return of all or a portion of the Grant money or payment of interest earned on the Grant money, Grantee may, at Grantee's option, satisfy such demand by paying to Grantor the amount demanded or permitting Grantor to recover

the amount demanded by deducting that amount from future payments to Grantee from Grantor. If Grantee fails to repay the amount demanded within fifteen (15) days of the demand, Grantee shall be deemed to have elected the deduction option and Grantor may deduct the amount demanded from any future payment from Grantor to Grantee, including but not limited to, any payment to Grantee from Grantor under this Agreement and any payment to Grantee from Grantor under any other contract or agreement, present or future, between Grantor and Grantee.

In performance of this Agreement, Grantee or Grantor may not be required to perform any act or acts that it is not authorized to perform under state or Federal law and may not be required to refrain from any act that it must perform under state or Federal law.

## **SECTION 7 MISCELLANEOUS**

Section 7.01. No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

Section 7.02. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. GRANTEE, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT.

Section 7.03. Notices. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto pertaining to this Agreement or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Notwithstanding the foregoing, to be effective against the other party, and any notice transmitted by facsimile must be confirmed by telephone notice to the other party. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

Section 7.04. Amendments. This Agreement may not be altered, modified, supplemented, or amended in any manner except by written instrument signed by both parties or as described and certified through CVSSD E-Grants. No term of this Agreement may be waived unless the party against whom such waiver is sought to be enforced has given its waiver in writing. Such amendment, waiver, or consent shall be effective only in the specific instance and for the specific purpose given.

Section 7.05. Subcontracts, Successors and Assignments.

- (a) Grantee shall not enter into any Subawards, as defined in 2 CFR 200.92, for any of the Project activities required by this Agreement without Grantor's prior written consent. Grantee shall require any Subrecipients, as defined in 2 CFR 200.93, to comply in writing with the terms and conditions of this Agreement and provide the same assurances as the Grantee must in its use of federal funds. Grantor's consent to any Subaward shall not relieve Grantee of any of its duties or obligations under this Agreement.

- (b) Grantee shall not enter into any Contracts, as defined in 2 CFR 200.22, required by this Agreement without Grantor's prior written consent. Grantee shall comply with procurement standards as defined in Section 5.08 when selecting any subcontractor. Grantee shall require any subcontractor to comply in writing with the terms of an Independent Contractor Agreement as described in the most recent version of the VOCA Grants Management Handbook. Grantor's consent to any Contract shall not relieve Grantee of any of its duties or obligations under this Agreement.
- (c) This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

Section 7.06. Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

#### Section 7.07. Contribution and Indemnification.

- (a) Generally. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- (b) Third Party Claim; Grantor's Joint Liability. With respect to a Third Party Claim for which the Grantor is jointly liable with the Grantee (or would be if joined in the Third Party Claim ), the Grantor shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of the Grantor on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantor on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the Grantor had sole liability in the proceeding.
- (c) Third Party Claim; Grantee's Joint Liability. With respect to a Third Party Claim for which the Grantee is jointly liable with the Grantor (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantor in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of the Grantor on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable

considerations. The relative fault of the Grantee on the one hand and of the Grantor on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- (d) **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- (e) **Indemnification by Subcontractors.** Grantee shall take all reasonable steps to cause each of its contractors that are not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the gross negligence or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- (f) **Subcontractor Insurance Requirements.** Grantee shall require each of its first tier contractors that is not a unit of local government as defined in ORS 190.003, if any, to: i) obtain insurance complying with the requirements set forth in Exhibit F, attached hereto and incorporated by reference herein, before the contractor performs under the contract between Grantee and the contractor (the "Subcontract"), and ii) maintain such insurance in full force throughout the duration of the Subcontract. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon and that is acceptable to Grantor. Grantee shall not authorize contractor to begin work under the Subcontract until the insurance is in full force. Thereafter, Grantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Grantee shall incorporate appropriate provisions in each Subcontract permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing a stop work order (or the equivalent) until the insurance is in full force or terminating the Subcontract as permitted by the Subcontract, or pursuing legal action to enforce the insurance requirements. In no event shall Grantee permit a contractor to work under a Subcontract when the Grantee is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Grantee directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

Section 7.08. False Claim Act. Grantee will refer to the Grantor any credible evidence that a principal, employee, agent, sub-grantee contractor, contractor or other person has submitted a false claim under the False Claims Act (31 USC 3729-3733; ORS 180.750-180.785) or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving funds provided under this Agreement.

Section 7.09. Time is of the Essence. Grantee agrees that time is of the essence with respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing

shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

Section 7.10. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section 3.03, Unexpended Grant Money; Section 5.15, Maintenance, Retention and Access to Records; Audits; and Section 7, MISCELLANEOUS and any other provisions that by their terms are intended to survive.

Section 7.11. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

Section 7.12. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

Section 7.13. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

Section 7.14. Headings. The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement and are not relevant to the interpretation of any provision of this Agreement.

Section 7.15. No Third Party Beneficiaries. Grantor and Grantee are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the dates set forth below their respective signatures.



**STATE OF OREGON**

Acting by and through its Department of Justice

By: \_\_\_\_\_

Name: Shannon L. Sivell

Title: Director, Crime Victim and Survivor Services Division

Date: \_\_\_\_\_

**AUTHORIZED AGENT FOR GRANTEE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED FOR LEGAL SUFFICIENCY**

By: Shannon L. Sivell

Title: Director, Crime Victim and Survivor Services Division

Date: Approved via email 11/4/2019



**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the U.S. Department of Justice ("Department") determines to award the covered transaction, grant, or cooperative agreement.

**1. LOBBYING**

As required by 31 U.S.C. § 1352, as implemented by 28 C.F.R. Part 69, the Applicant certifies and assures (to the extent applicable) the following:

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

(b) If the Applicant's request for Federal funds is in excess of \$100,000, and any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal grant or cooperative agreement, the Applicant shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities" in accordance with its (and any DOJ awarding agency's) instructions; and

(c) The Applicant shall require that the language of this certification be included in the award documents for all subgrants and procurement contracts (and their subcontracts) funded with Federal award funds and shall ensure that any certifications or lobbying disclosures required of recipients of such subgrants and procurement contracts (or their subcontractors) are made and filed in accordance with 31 U.S.C. § 1352.

**2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

A. Pursuant to Department regulations on nonprocurement debarment and suspension implemented at 2 C.F.R. Part 2867, and to other related requirements, the Applicant certifies, with respect to prospective participants in a primary tier "covered transaction," as defined at 2 C.F.R. § 2867.20(a), that neither it nor any of its principals:

a) is presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) has within a three-year period preceding this application been convicted of a felony criminal violation under any Federal law, or been convicted or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, tribal, or local) transaction or private agreement or transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion or receiving stolen property, making false claims, or obstruction of justice, or commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects its (or its principals') present responsibility;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, tribal, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and/or



(d) has within a three-year period preceding this application had one or more public transactions (Federal, State, tribal, or local) terminated for cause or default.

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application. Where the Applicant or any of its principals was convicted, within a three-year period preceding this application, of a felony criminal violation under any Federal law, the Applicant also must disclose such felony criminal conviction in writing to the Department (for OJP Applicants, to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov); for OVW Applicants, to OVW at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov)) unless such disclosure has already been made.

### 3. FEDERAL TAXES

A. If the Applicant is a corporation, it certifies either that (1) the corporation has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, or (2) the corporation has provided written notice of such an unpaid tax liability (or liabilities) to the Department (for OJP Applicants, to OJP at [Ojpcompliancereporting@usdoj.gov](mailto:Ojpcompliancereporting@usdoj.gov); for OVW Applicants, to OVW at [OVW.GFMD@usdoj.gov](mailto:OVW.GFMD@usdoj.gov)).

B. Where the Applicant is unable to certify to any of the statements in this certification, it shall attach an explanation to this application.

### 4. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 83, Subpart F, for grantees, as defined at 28 CFR Sections 83.620 and 83.650:

A. The Applicant certifies and assures that it will, or will continue to, provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the award be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the award, the employee will

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of the employee's conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(a) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title of any such convicted employee, to: U.S. Department of Justice, Office of Justice Programs, ATTN: Control Desk, 810 7th Street, N.W., Washington, D.C. 20531.

Notice shall include the identification number(s) of each affected award;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the Applicant to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812). I also acknowledge that the Department's awards, including certifications provided in connection with such awards, are subject to review by the Department, including by its Office of the Inspector General.

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1. Grantee Name and Address

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2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

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4. Typed Name and Title of Authorized Representative

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5. Signature

6. Date

**STANDARD ASSURANCES**

On behalf of the Applicant, and in support of this application for a grant or cooperative agreement, I certify under penalty of perjury to the U.S. Department of Justice ("Department"), that all of the following are true and correct:

(1) I have the authority to make the following representations on behalf of myself and the Applicant. I understand that these representations will be relied upon as material in any Department decision to make an award to the Applicant based on its application.

(2) I certify that the Applicant has the legal authority to apply for the federal assistance sought by the application, and that it has the institutional, managerial, and financial capability (including funds sufficient to pay any required non-federal share of project costs) to plan, manage, and complete the project described in the application properly.

(3) I assure that, throughout the period of performance for the award (if any) made by the Department based on the application--

- a. the Applicant will comply with all award requirements and all federal statutes and regulations applicable to the award;
- b. the Applicant will require all subrecipients to comply with all applicable award requirements and all applicable federal statutes and regulations; and
- c. the Applicant will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest.

(4) The Applicant understands that the federal statutes and regulations applicable to the award (if any) made by the Department based on the application specifically include statutes and regulations pertaining to civil rights and nondiscrimination, and, in addition--

- a. the Applicant understands that the applicable statutes pertaining to civil rights will include section 601 of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); section 901 of the Education Amendments of 1972 (20 U.S.C. § 1681); and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. § 6102);
- b. the Applicant understands that the applicable statutes pertaining to nondiscrimination may include section 809(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. § 10228(c)); section 1407(e) of the Victims of Crime Act of 1984 (34 U.S.C. § 20110(e)); section 299A(b) of the Juvenile Justice and Delinquency Prevention Act of 2002 (34 U.S.C. § 11182(b)); and that the grant condition set out at section 40002(b)(13) of the Violence Against Women Act (34 U.S.C. § 12291(b)(13)), which will apply to all awards made by the Office on Violence Against Women, also may apply to an award made otherwise;
- c. the Applicant understands that it must require any subrecipient to comply with all such applicable statutes (and associated regulations); and
- d. on behalf of the Applicant, I make the specific assurances set out in 28 C.F.R. §§ 42.105 and 42.204.

(5) The Applicant also understands that (in addition to any applicable program-specific regulations and to applicable federal regulations that pertain to civil rights and nondiscrimination) the federal regulations applicable to the award (if any) made by the Department based on the application may include, but are not limited to, 2 C.F.R. Part 2800 (the DOJ "Part 200 Uniform Requirements") and 28 C.F.R. Parts 22 (confidentiality - research and statistical information), 23 (criminal intelligence systems), 38 (regarding faith-based or religious organizations participating in federal financial assistance programs), and 46 (human subjects protection).

(6) I assure that the Applicant will assist the Department as necessary (and will require subrecipients and contractors to assist as necessary) with the Department's compliance with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. § 306108), the Archeological and Historical Preservation Act of 1974 (54 U.S.C. §§ 312501-312508), and the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4335), and 28 C.F.R. Parts 61 (NEPA) and 63 (floodplains and wetlands).

(7) I assure that the Applicant will give the Department and the Government Accountability Office, through any authorized representative, access to, and opportunity to examine, all paper or electronic records related to the award (if any) made by the Department based on the application.

(8) I assure that, if the Applicant is a governmental entity, with respect to the award (if any) made by the Department based on the application—

- a. it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655), which govern the treatment of persons displaced as a result of federal and federally-assisted programs; and
- b. it will comply with requirements of 5 U.S.C. §§ 1501-1508 and 7324-7328, which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by federal assistance.

(9) If the Applicant applies for and receives an award from the Office of Community Oriented Policing Services (COPS Office), I assure that as required by 34 U.S.C. § 10382(c)(11), it will, to the extent practicable and consistent with applicable law—including, but not limited to, the Indian Self-Determination and Education Assistance Act—seek, recruit, and hire qualified members of racial and ethnic minority groups and qualified women in order to further effective law enforcement by increasing their ranks within the sworn positions, as provided under 34 U.S.C. § 10382(c)(11).

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification, or in the application that it supports, may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the Applicant to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and 3801-3812). I also acknowledge that the Department's awards, including certifications provided in connection with such awards, are subject to review by the Department, including by its Office of the Inspector General.

\_\_\_\_\_  
Print Name of Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

SINGLE AUDIT CERTIFICATION LETTER

October 1, 2019

Ms. Carrie Walker  
Clackamas County, acting by and through its District Attorney's Office  
807 Main Street  
Oregon City, OR 97045-1845

RE: Subrecipient Audit Requirements of 2 CFR Part 200, Subpart F for audits of Grant Agreement between the Oregon Department of Justice and Clackamas County, acting by and through its District Attorney's Office for the period of October 1, 2019 – September 30, 2021 under the VOCA Grant Award/CFDA#16-575 /\$1,152,547.08.

Dear Ms. Carrie Walker,

The Oregon Department of Justice is subject to the requirements of Office of Management and Budget (OMB) 2 CFR Part 200, subpart F. As such, the Oregon Department of Justice is required to monitor our subrecipients of federal awards and determine whether they have met the audit requirements and whether they are in compliance with federal laws and regulations. A copy of 2 CFR Part 200, Subpart F can be found at the following web address: <https://www.ecfr.gov/cgi-bin/text-idx?SID=704835d27377ef5213a51c149de40cab&node=2:1.1.2.2.1&rgn=div5#sp2.1.200.f>.

Accordingly, we are requesting that you check one of the following, provide all appropriate documentation regarding your organization's compliance with the audit requirements (CVSSD will only accept the URL address for your organization's audit or an electronic copy), sign and date the letter and return this letter along with your Grant Agreement and Exhibits A, B, D, E, F, G, and H.

1. \_\_\_\_\_ We have completed our single audit for our most recent fiscal year, ending \_\_\_\_\_. The URL address indicated below or an electronic copy of the audit report and a schedule of federal programs by major program have been provided. (If material exceptions were noted, the responses and corrective actions taken have also been provided.)

**URL address for single Audit:**

2. \_\_\_\_\_ We expect our single audit for our most recent fiscal year, ending \_\_\_\_\_, to be completed by \_\_\_\_\_. The URL address or an electronic copy of our audit report and a schedule of federal programs by major program will be forwarded to the Oregon Department of Justice within 30 days of receipt of the report. (If material exceptions are noted, a copy of the responses and corrective actions taken will be included.)

3. \_\_\_\_\_ We are not subject to the single audit requirement because:  
\_\_\_\_\_ We are a for-profit organization.  
\_\_\_\_\_ We expend less than \$750,000 in federal funds annually.  
\_\_\_\_\_ Other (please explain) \_\_\_\_\_

\_\_\_\_\_  
Print Name of Fiscal Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Fiscal Officer

\_\_\_\_\_  
Date

Please address all correspondence to:  
Oregon Department of Justice, CVSSD  
1162 Court Street NE  
Salem, OR 97301-4096

Oregon Department of Justice – Crime Victim and Survivor Services Division  
**CERTIFICATION OF COMPLIANCE WITH REGULATIONS**  
**OFFICE FOR CIVIL RIGHTS, OFFICE OF JUSTICE PROGRAMS**  
**FOR SUBGRANTS ISSUED BY THE OREGON DEPARTMENT OF JUSTICE**

*INSTRUCTIONS: Complete the identifying information, which is found on the Grant Award face sheet, in the table below. Read the form completely, identifying, under "I," the person responsible for reporting civil rights findings; and checking only the one certification under "II" that applies to your agency. Have your Authorized Official sign as appropriate on page 2, forward a copy to the person you identified under "I", keep a copy for your records, and return the original to the Oregon Department of Justice, CVSSD, 1162 Court Street NE, Salem, OR 97301-4096 along with your Grant Agreement and Exhibits A, B, C, E, and F.*

<b>Grant Award:</b> VOCA/CFA-2019-ClackamasCo.DAVAP-00008		<b>Grant Title:</b> 2019 VOCA Non-Competitive Grant	
<b>Grantee Name (Funded Entity):</b> Clackamas County, acting by and through its District Attorney's Office			
<b>Address:</b> 807 Main Street, Oregon City, OR 97045-1845			
<b>Project Period:</b> Start Date: 10/1/2019 End Date: 9/30/2021		<b>Award Amount:</b> VOCA \$1,152,547.08	
<b>Contact Name, Phone # &amp; E-mail address:</b> Ms. Carrie Walker, (503) 655-8616, carriewal@co.clackamas.or.us			

**AUTHORIZED OFFICIAL’S CERTIFICATION:** As the Authorized Official for the above Grantee, I certify, by my signature below, that I have read and am fully cognizant of our duties and responsibilities under this Certification.

I. **REQUIREMENTS OF SUBGRANT RECIPIENTS:** All subgrant recipients (regardless of the type of entity or the amount awarded) are subject to prohibitions against discrimination in any program or activity, and must take reasonable steps to provide meaningful access for persons with limited English proficiency.

◆ I certify that this agency will maintain data (and submit when required) to ensure that: our services are delivered in an equitable manner to all segments of the service population; our employment practices comply with Equal Opportunity Requirements, 28 CFR 42.207 and 42.301 *et seq.*; our projects and activities provide meaningful access for people with limited English proficiency as required by Title VI of the Civil Rights Act, (See also, 2000 Executive Order #13166).

◆ I also certify that the person in this agency or unit of government who is responsible for reporting civil rights findings of discrimination will submit these findings, if any, to the Oregon Department of Justice within 45 days of the finding, and/or if the finding occurred prior to the grant award beginning date, within 45 days of receipt of this form. A copy of this Certification will be provided to this person, as identified here:

Person responsible for reporting civil rights findings of discrimination:

I certify that \_\_\_\_\_ [Grantee] will comply with applicable federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

\_\_\_\_\_  
 Print or Type Name and Title Signature Date

II. **EQUAL EMPLOYMENT OPPORTUNITY PLAN (EEOP) CERTIFICATIONS:**

The federal regulations implementing the Omnibus Crime Control and Safe Streets Act (Safe Streets Act) of 1968, as amended, require some recipients of financial assistance from the U.S. Department of Justice subject to the statute’s administrative provisions to create, keep on file, submit to the Office for Civil Rights (OCR) at the Office of Justice Programs (OJP) for review, and implement an Equal Employment Opportunity Plan (EEOP). *See* 28 C.F.R. pt. 42, subpt. E. Check the box before **ONLY THE ONE APPROPRIATE CERTIFICATION** (A, B or C below) that applies to this Grantee agency during the period of the grant duration noted above.

**CERTIFICATION A: Declaration Claiming Complete Exemption from the EEOP Requirement**

Please check all the following boxes that apply:

- Grantee is an educational, medical or non-profit institution or an Indian Tribe; and/or
- Grantee has less than 50 employees; and/or
- Grantee was awarded less than \$25,000 in federal U.S. Department of Justice funds.

I, \_\_\_\_\_ [authorized official],  
certify that \_\_\_\_\_ [Grantee]  
is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R § 42.302.

\_\_\_\_\_  
Print or Type Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CERTIFICATION B: Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review**

If a recipient agency has fifty or more employees and is receiving a single award of \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to the OCR for review as long as it certifies the following (42 C.F.R. § 42.305):

I, \_\_\_\_\_ [authorized official],  
certify that \_\_\_\_\_ [Grantee],  
which has fifty or more employees and is receiving a single award for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR pt. 42, subpt. E. I further certify that within the last twenty-four months, the proper authority has formulated and signed into effect the EEOP and, as required by applicable federal law, it is available for review by the public, employees, DOJ/CVSSD, and the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice. The EEOP is on file at the following office:

\_\_\_\_\_ [organization],

\_\_\_\_\_ [address].

\_\_\_\_\_  
Print or Type Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**CERTIFICATION C: Declaration Stating that an EEOP Short Form Has Been Submitted to the Office for Civil Rights for Review**

If a recipient agency has fifty or more employees and is receiving a single award of \$500,000 or more, then the recipient agency must send an EEOP Short Form to the OCR for review.

I, \_\_\_\_\_ [authorized official],  
certify that \_\_\_\_\_ [Grantee],  
which has fifty or more employees and is receiving a single award of \$500,000 or more, has formulated an EEOP in accordance with 28 CFR pt. 42, subpt. E, and sent it for review on \_\_\_\_\_ [date] to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice.

\_\_\_\_\_  
Print or Type Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\* \* \* \* \*

This original signed form must be returned to the Oregon Department of Justice, Crime Victim and Survivor Services Division, 1162 Court Street NE, Salem, OR 97301-4096, along with your Grant Agreement and Exhibits A, B, C, E, and F. You must also forward a signed copy to the person you identified under "I" on page 1. Electronically scan the signed document and send the signed document to [EEOPForms@usdoj.gov](mailto:EEOPForms@usdoj.gov) with EEOP Certification in the subject line. Please retain a copy for your records.

For more information regarding EEOP requirements, please access the Office for Justice Programs, Office for Civil Rights web page at: <http://www.ojp.usdoj.gov/ocr>.

**VICTIMS OF CRIME ACT SPECIAL CONDITIONS****1. Requirement of the award; remedies for non-compliance or for materially false statements**

The conditions of this award are material requirements of the award. Compliance with any certifications or assurances submitted by or on behalf of the Grantee that relates to conduct during the period of performance also is a material requirement of this award. By signing and accepting this award on behalf of the Grantee, the authorized official accepts all material requirements of the award, and specifically adopts all such assurances or certifications as if personally executed by the authorized official for the Grantee.

Failure to comply with any one or more of these award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or a certification or assurance related to conduct during the award period -- may result in the Oregon Department of Justice, Crime Victim and Survivor Services Division ("CVSSD") taking appropriate action with respect to the Grantee and the award. Among other things, the CVSSD may withhold award funds, disallow costs, or suspend or terminate the award. The Department of Justice ("DOJ"), including the Office of Justice Programs ("OJP"), also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273, and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable, such provision shall be deemed severable from this award.

**2. Applicability of Part 200 Uniform Requirements**

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this award.

For more information and resources on the Part 200 Uniform Requirements as they relate to CVSSD awards and subawards ("subgrants"), see the Office of Justice Programs (OJP) website at <http://ojp.gov/funding/Part200UniformRequirements.htm> (page under construction as of 10/1/2017).

Record retention and access: Records pertinent to the award that the Grantee (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report, unless a different retention period applies -- and to which the Grantee (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.333.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the Grantee is to contact CVSSD promptly for clarification.

**3. Compliance with DOJ Grants Financial Guide**

The Grantee agrees to comply with the Department of Justice Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at <https://ojp.gov/financialguide/DOJ/index.htm>), including any updated version that may be posted during the period of performance. The Grantee agrees to comply with the DOJ Grants Financial Guide.



4. Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code. Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

5. Requirements related to "de minimis" indirect cost rate

A Grantee that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise CVSSD of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

6. Requirement to report potentially duplicative funding

If the Grantee currently has other active awards of federal funds, or if the Grantee receives any other award of federal funds during the period of performance for this award, the Grantee promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the Grantee must promptly notify the awarding agency (CVSSD and OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the awarding agency, must seek a budget-modification or change-of-project-scope grant adjustment notice (GAN) or grant amendment to eliminate any inappropriate duplication of funding.

7. Requirements related to System for Award Management and Unique Entity Identifiers

The Grantee must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at <http://www.sam.gov>. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The Grantee also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the Grantee) the unique entity identifier required for SAM registration.

The details of the Grantee's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at <http://ojp.gov/funding/Explore/SAM.htm> (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

8. Requirement to report actual or imminent breach of personally identifiable information (PII)

The Grantee (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient)-- 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "personally identifiable information (PII)" (2 CFR 200.79) within the scope of a CVSSD grant-funded program or activity, or 2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of

PII to a CVSSD Fund Coordinator no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

9. Employment eligibility verification for hiring under the award

1. The Grantee (and any subrecipient at any tier) must:

- A. Ensure that, as part of the hiring process for any position in the United States that is or will be funded (in whole or in part) with VOCA funds, the Grantee (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1) and (2).
- B. Notify all persons associated with the Grantee (or any subrecipient) who are or will be involved in activities under this VOCA award of both –
  - 1) This award requirement for verification of employment eligibility, and
  - 2) The associated provisions of 8 U.S.C. 1324a(a)(1) and (2) that, generally speaking, make it unlawful to hire (or recruit for employment) certain aliens.
- C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and the associated provisions of 8 U.S.C. 1324a(a)(1) and (2).
- D. As part of the recordkeeping for this award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The Grantee must monitor subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons “who are or will be involved in activities under this award” specifically includes (without limitation) any and all Grantee (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the Grantee (or any subrecipient) may choose to participate in, and use, E-Verify ([www.e-verify.gov](http://www.e-verify.gov)), provided an appropriate person authorized to act on behalf of the Grantee (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a “Tentative Nonconfirmation” or a “Final Nonconfirmation”) to confirm employment eligibility for each hiring for a position in the United States that is or will be funded with award funds.

C. “United States” specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any Grantee, any subrecipient at any tier, or any person or other entity, to violate federal law, including any applicable civil rights or nondiscrimination law.

- E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any Grantee, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1) and (2).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (<https://www.e-verify.gov/>) or email E-Verify at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov). E-Verify employer agents can email E-Verify at [E-VerifyEmployerAgent@dhs.gov](mailto:E-VerifyEmployerAgent@dhs.gov).

10. All subawards ("subgrants") must have specific federal authorization

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at <http://ojp.gov/funding/Explore/SubawardAuthorization.htm> (Award Condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

11. Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed \$250,000

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, \$250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site <http://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm> Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed \$250,000)), and are incorporated by reference here.

12. Unreasonable restrictions on competition under the award; association with federal government

With respect to any procurement of property or services that is funded (in whole or in part) by VOCA funds, whether by the Grantee or subrecipient at any tier, and regardless of dollar amount of the purchase or acquisition, the method of procurement, or the nature of any legal instrument used, Grantee shall:

- A. Not discriminate, in procurement transactions, against associates of the federal government. Consistent with the (DOJ) Part 200 Uniform Requirements – including as set out at 2 C.F.R. 200.300 (requiring awards to be “manage[d] and administer[ed] in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements”) and 200.319(a) (generally requiring “[a]ll procurement transactions [to] be conducted in a manner providing full and open competition” and forbidding practices ‘restrictive of competition’ such as “[p]lacing unreasonable requirements on firms in order for them to qualify to do business” and taking “[a]ny arbitrary action in the procurement process”) – no recipient (or subrecipient, at any tier) may (in any procurement transaction) discriminate against any person or entity on the basis of such person or entity’s status as an “associate of the federal government” (or on the basis of such person or entity’s status as a parent, affiliate, or subsidiary of such an associate), except as expressly set out in 2 C.F.R. 200.319(a) or as specifically authorized by USDOJ; and

B. Monitor subrecipient compliance with this condition.

The term “associate of the federal government” means any person or entity engaged or employed (in the past or at present) by or on behalf of the federal government – as an employee, contractor or subcontractor (at any tier), grant recipient or subrecipient (at any tier), agent or otherwise – in undertaking any work, project, or activity for or on behalf of (or in providing goods or services to or on behalf of) the federal government, and includes any applicant for such employment or engagement, and any person or entity committed by legal instrument to undertake any such work, project, or activity (or to provide such goods or services) in future.

Nothing in this condition shall be understood to authorize or require any grantee, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

13. Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and CVSSD authority to terminate award)

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of the Grantee, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the Grantee or of any subrecipient ("subgrantees").

The details of the Grantee's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at <http://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm> (Award condition: Prohibited conduct by Grantees and subgrantees related to trafficking in persons (including reporting requirements and CVSSD authority to terminate award)), and are incorporated by reference here.

14. Determination of suitability to interact with participating minors

If a purpose of some or all of the activities to be carried out under this VOCA award (whether by Grantee or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age:

The Grantee, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at <https://ojp.gov/funding/Explore/Interact-Minors.htm> (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

15. Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "2015 DOJ Grants Financial Guide").

16. Requirement for data on performance and effectiveness under the award

The Grantee must collect and maintain data that measure the performance and effectiveness of activities under this award. The data must be provided to CVSSD in the manner (including within the timeframes) specified by CVSSD in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act, and other applicable laws.

17. OJP Training Guiding Principles

Any training or training materials that the Grantee -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with CVSSD award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at <http://ojp.gov/funding/Implement/TrainingPrinciplesForGrantees-Subgrantees.htm>.

18. Effect of failure to address audit issues

The Grantee understands and agrees that the awarding agency may withhold award funds, or may impose other related requirements, if (as determined by the awarding agency) the Grantee does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of CVSSD awards.

19. Potential imposition of additional requirements

The Grantee agrees to comply with any additional requirements that may be imposed by CVSSD during the period of performance for this award, if the Grantee is designated as "high risk" for purposes of the DOJ high-risk grantee list.

20. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

21. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

22. Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries. Part 38 of 28 C.F.R., a DOJ regulation, was amended effective May 4, 2016.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to Grantee and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to Grantees and subgrantees that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

23. Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a Grantee (or subgrantee) would or might fall within the scope of this prohibition, the Grantee is to contact CVSSD for guidance, and may not proceed without the express prior written approval of CVSSD.

#### 24. Compliance with general appropriations-law restrictions on the use of federal funds (FY 2018)

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2018, are set out at <https://ojp.gov/funding/Explore/FY19AppropriationsRestrictions.htm>, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a Grantee (or a subgrantee) would or might fall within the scope of an appropriations-law restriction, the Grantee is to contact CVSSD for guidance, and may not proceed without the express prior written approval of CVSSD.

#### 25. Reporting Potential Fraud, Waste, and Abuse, and Similar Misconduct

The Grantee and any subrecipients ("subgrantees") must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award -- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by-- (1) online submission accessible via the OIG webpage at <https://oig.justice.gov/hotline/contact-grants.htm> (select "Submit Report Online"); (2) mail directed to: Office of the Inspector General, U.S. Department of Justice, Investigations Division, 1425 New York Avenue, N.W. Suite 7100, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Fraud Detection Office (Attn: Grantee Reporting) at (202) 616-9881(fax).

Additional information is available from the DOJ OIG website at <https://oig.justice.gov/hotline>.

#### 26. Restrictions and certifications regarding non-disclosure agreements and related matters

No Grantee or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene

requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the Grantee--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the Grantee does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the Grantee's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

27. Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The Grantee (and any subgrantee at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The Grantee also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the Grantee is to contact CVSSD for guidance.

28. Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages Grantees and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by

this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

29. Requirement to disclose whether Grantee is designated "high risk" by a federal grant-making agency outside of DOJ

If the Grantee is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to CVSSD by email to [Shannon.Sivell@doj.state.os.us](mailto:Shannon.Sivell@doj.state.os.us). For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the Grantee's past performance, or other programmatic or financial concerns with the Grantee. The Grantee's disclosure must include the following: 1. The federal awarding agency that currently designates the Grantee high risk, 2. The date the Grantee was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

30. Discrimination Findings

The Grantee assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a recipient of victim assistance formula funds under this award, the Grantee will forward a copy of the findings to CVSSD.

31. Grantee integrity and performance matters: Requirement to report information on certain civil, criminal, and administrative proceedings to SAM and FAPIIS

If the total value of the Grantee's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the Grantee must comply with any and all applicable requirements regarding reporting of information on civil, criminal, and administrative proceedings connected with (or connected to the performance of) either this OJP award or any other grant, cooperative agreement, or procurement contract from the federal government. Under certain circumstances, Grantees of OJP awards are required to report information about such proceedings, through the federal System for Award Management (known as "SAM"), to the designated federal integrity and performance system (currently, "FAPIIS").

The details of Grantee obligations regarding the required reporting (and updating) of information on certain civil, criminal, and administrative proceedings to the federal designated integrity and performance system (currently, "FAPIIS") within SAM are posted on the OJP web site at <http://ojp.gov/funding/FAPIIS.htm> (Award condition: Recipient Integrity and Performance Matters, including Recipient Reporting to FAPIIS), and are incorporated by reference here.

32. VOCA Requirements

The Grantee, and any subrecipient ("subgrantee") at any tier, must comply with the conditions of the Victims of Crime Act (VOCA) of 1984, sections 1404(a)(2), and 1404(b)(1) and (2), 34 U.S.C. 20103(a)(2) and (b)(1) and (2) (and the applicable program guidelines and regulations), as required. Specifically, the Grantee certifies that funds under this award will:

a) be subawarded only to eligible victim assistance organizations, 34 U.S.C. 20103(a)(2);

b) not be used to supplant State and local public funds that would otherwise be available for crime victim assistance, 34 U.S.C. 20103(a)(2), if a government-based organization; and

c) be allocated in accordance with program guidelines or regulations implementing 34 U.S.C. 20103(a)(2)(A) and 34 U.S.C. 20103(a)(2)(B) to, at a minimum, assist victims in one or more of the following categories: sexual assault, child abuse, domestic violence, and underserved victims of violent crimes as identified by CVSSD.



- 33. The Grantee, and any subrecipient ("subgrantee") at any tier, must authorize the Office for Victims of Crime (OVC) and/or the Office of the Chief Financial Officer (OCFO), and its representatives, access to and the right to examine all records, books, paper, or documents related to the VOCA grant.
- 34. The Grantee agrees to submit (and, as necessary, require subgrantees to submit) quarterly performance reports on the performance metrics identified by CVSSD, and in the manner required by CVSSD. This information on the activities supported by the award funding will assist in assessing the effects that VOCA Victim Assistance funds have had on services to crime victims within the jurisdiction.

35. Demographic Data

The Grantee, and any subrecipient ("subgrantee") at any tier, must collect and maintain information on race, sex, national origin, age, and disability of victims receiving assistance, where such information is voluntarily furnished by the victim.

- 36. The Grantee understands and agrees that it has a responsibility to monitor its subrecipients' ("subgrantees") compliance with applicable federal civil rights laws.

**Certification:** I certify that I have read and reviewed the above assurances and links to referenced Award Conditions and certify that the Grantee will comply with all provisions of the Victims of Crime Act of 1984 (VOCA), as amended, and all other applicable Federal laws.

\_\_\_\_\_  
Print Name of Authorized Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Fiscal Officer

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Fiscal Officer

\_\_\_\_\_  
Date

## SUBCONTRACTOR INSURANCE REQUIREMENTS

**A. REQUIRED INSURANCE.** Subcontractor shall obtain at Subcontractor's expense the insurance specified in this section prior to performing under this Agreement and shall maintain it in full force and at its own expense throughout the duration of this Agreement. Subcontractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Grantor.

i. **WORKERS COMPENSATION.** All employers, including Subcontractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2).

ii. **EMPLOYERS' LIABILITY.**

**Required by Agency**    **Not required by Agency.**

If Subcontractor is a subject employer, as defined in ORS 656.023, Subcontractor shall obtain employers' liability insurance coverage.

iii. **PROFESSIONAL LIABILITY**

**Required by Agency**    **Not required by Agency.**

If in the conduct and implementation of the Subcontract, Subcontractor provides professional advice or services, Subcontract shall obtain and maintain Professional Liability Insurance in a form and with coverages that are satisfactory to the State covering any damages caused by an error, omission or any negligent acts related to the professional services to be provided under this Agreement.

iv. **COMMERCIAL GENERAL LIABILITY.**

**Required by Agency**    **Not required by Agency.**

Subcontractor shall obtain and maintain Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products, and completed operations. Coverage shall be written on an occurrence basis.

v. **AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.**

**Required by Agency**    **Not required by Agency.**

If in the conduct and implementation of the Subcontract, Subcontractor provides transportation for or transports individuals in automobiles, Subcontractor shall obtain and maintain Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability").

**B. ADDITIONAL INSURED.** The Commercial General Liability insurance and Automobile Liability insurance required under this Agreement shall include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to Subcontractor's activities to be performed under this Agreement. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

**C. "TAIL" COVERAGE.** If any of the required professional liability insurance is on a "claims made" basis, Subcontractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this Agreement, for a minimum of 24 months following Subcontractor's completion and Grantor's acceptance of all performance required under this Agreement. Notwithstanding the foregoing 24-month requirement, if Subcontractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Subcontractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Agreement. Subcontractor shall provide to Grantee or Grantor, upon Grantee or Grantor's request, certification of the coverage required under this Exhibit F.

**D. CERTIFICATE(S) OF INSURANCE.** Subcontractor shall provide to Grantee Certificate(s) of Insurance for all required insurance before performance required under this Agreement. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Subcontractor shall pay for all deductibles, self-insured retention and self-insurance, if any. **The Subcontractor shall immediately notify the Grantee of any material change in insurance coverage.**



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for Service Level Agreement between Clackamas Broadband eXchange and  
West Linn-Wilsonville School District to renew existing dark fiber connections.

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with West Linn-Wilsonville School District (WLWV) for 15 dark fiber connections to provide dark fiber connectivity.
<b>Dollar Amount and Fiscal Impact</b>	WLWV will pay a recurring annual fee of \$45,900.00.
<b>Funding Source</b>	WLWV will pay the annual lease fee at the beginning of each fiscal year.
<b>Duration</b>	Effective upon signature by the board the SLA is effective for three (3) years with automatic annual extensions unless terminated by either party.
<b>Previous Board Action</b>	Board previously approved CBX to build and maintain dark fiber connections for the North Clackamas School District.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. Build a strong infrastructure.</li><li>2. Build public trust through good government.</li></ol>
<b>Contact Person</b>	Dave Devore (503)723-4996

### BACKGROUND:

CBX is looking for approval to continue providing 15 dark fiber connections for the West Linn-Wilsonville School District. Due to reimbursement rules from the federal government, each school district has to go out for a competitive bid for any telecommunication service periodically to ensure the school district is receiving the best deal for their services. The West Linn-Wilsonville School District just completed such a bid and CBX is the best deal.

### RECOMMENDATION:

Staff respectfully recommends approval to enter into this fiber agreement with the West Linn-Wilsonville School District. 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

# Clackamas County

## FIBER OPTIC SERVICE LEVEL AGREEMENT

West Linn – Wilsonville School District  
(Customer Name)

### 1. Recitals

**WHEREAS**, Clackamas County (County) desires to provide to West Linn – Wilsonville School District (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

**WHEREAS**, Customer desires to use the Services; and

**WHEREAS**, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

### 2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

### 3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber (“Fiber”), between sites specifically identified in Appendix A for the exclusive use of the Customer’s internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

### 4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

## **5. Term of Agreement**

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated as herein provided, this Agreement shall continue for a period of three (3) years following the Service Start Date. This Agreement shall continue to July 1 following the date of commencement, and shall be automatically renewed on July 1 of each subsequent year, for a term of one year, at the County's then-current rate schedule.

## **6. Rates**

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

## **7. Payment Options**

a. **Annual Payments**

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

**8. Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

**9. Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law.

**10. Content Control and Privacy**

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

**11. Assignment and Successors**

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

**12. Damage**

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

**13. Force Majeure**

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

**14. Consequential Damages**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR



INCONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

**15. Public Contracting Provisions**

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

**16. Non-Appropriation or Change in Law**

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

**17. Compliance with Laws**

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

**18. Taxes and Assessments**

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

## **19. Termination**

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.
- b. Pursuant to Section 20 of this Agreement, either the County or the Customer may terminate this Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived
- c. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- d. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

## **20. Default**

1. Either of the following events shall constitute a default:
  - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
  - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

## **21. Amendment**

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

## **22. No recourse Against the Grantor**

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

## **23. Notice**

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile

addressed as follows:

**Notice to the County**

Manager, Clackamas Broadband Express  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number (503) 655-8255

with a copy to

Chief Information Officer  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number: (503) 655-8255

**Notice to the Customer**

Chief Information Officer  
West Linn – Wilsonville School District  
22210 SW Stafford Road  
Tualatin, OR 97062  
Fax Number: (503) 673-7044

with a copy to

Superintendent  
West Linn – Wilsonville School District  
22210 SW Stafford Road  
Tualatin, OR 97062  
Fax Number: (503) 673-7001

Either Party, by similar written notice, may change the address to which notices shall be sent.

**24. Debt Limitations**

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

**25. No Attorney Fees**

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

**26. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**27. Whole Contract**

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the date and year first above written.

**Clackamas County**

By (signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

West Linn – Wilsonville School District  
(Customer Name)

By (signature): Kathleen J. Ludwig  
Name (print): KATHLEEN LUDWIG  
Title: SUPERINTENDENT  
Date: 1-17-20

## APPENDIX A

### SERVICE AND RATE SCHEDULE

#### 1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

#### 2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

#### 3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

#### 4. Annual Recurring Charges

	<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Monthl y Rate (\$)</b>
1	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Willamette Primary School 1403 12 <sup>th</sup> St West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
2	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Boones Ferry Primary 11495 SW Wilsonville Rd Wilsonville, OR 97070	One Pair (two) dark fibers	\$255.00
3	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Arts & Technology High 29796 SW Town Center Loop E Wilsonville, OR 97070	One Pair (two) dark fibers	\$255.00
4	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	West Linn High 5464 West "A" St West Linn, OR 97068	One Pair (two) dark fibers	\$255.00

5	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Bolton Primary 5933 SW Holmes St West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
6	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Lowrie Primary 28995 SW Brown Rd Wilsonville, OR 97070	One Pair (two) dark fibers	\$255.00
7	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Rosemont Ridge Middle 20001 Salamo Rd West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
8	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Sunset Primary 2351 Oxford St West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
9	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Trillium Creek Primary 1025 Rosemont Rd West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
10	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Cedaroak Park Primary 4515 S Cedaroak Dr West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
11	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Wilsonville High 6800 SW Wilsonville Rd Wilsonville, OR 97070	One Pair (two) dark fibers	\$255.00
12	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Boeckman Primary 6700 SW Wilsonville Rd Wilsonville, OR 97070	One Pair (two) dark fibers	\$255.00
13	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Stafford Primary 19875 SW Stafford Rd West Linn, OR 97068	One Pair (two) dark fibers	\$255.00
14	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Clackamas Educational Service District 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	One Pair (two) dark fibers	\$255.00
15	West Linn-Wilsonville School District 22210 SW Stafford Rd Tualatin, OR 97062	Three River Charter School 4975 Willamette Falls Dr West Linn, OR 97068	One Pair (two) dark fibers	\$255.00

**5. Nonrecurring Charges**

<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Amount (\$)</b>	
1	No Construction	No Construction	Construction	\$00.00

**6. Late Payment Interest**

Customer will be charged interest for any payment made after its due date (thirty

(30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

**7. Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

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## **APPENDIX B**

### **MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES**

#### **1. Defined Terms**

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

#### **2. General**

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

#### **3. Fiber Optic Network**

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

#### **4. Restoration**

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
  - b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
  - c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
  - d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
  - e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.
5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

***Remainder of this page intentionally left blank.***

## APPENDIX C

### FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

#### 1. Fiber and Connector Standards

##### a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

##### b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

##### c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

*Remainder of this page intentionally left blank.*



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

January 30, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for Service Level Agreement between Clackamas Broadband eXchange  
and Estacada School District to renew existing dark fiber connection.

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with the Estacada School District for a dark fiber connection.
<b>Dollar Amount and Fiscal Impact</b>	Estacada School District will pay a recurring annual fee of \$3,060.00.
<b>Funding Source</b>	Estacada School District will pay the annual lease fee at the beginning of each fiscal year.
<b>Duration</b>	Effective upon signature by the board, the SLA is effective for five (5) years.
<b>Previous Board Action</b>	Board previously approved CBX to build and maintain a dark fiber network for North Clackamas School District.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"><li>1. Build a strong infrastructure.</li><li>2. Build public trust through good government.</li></ol>
<b>Contact Person</b>	Dave Devore (503)723-4996

### BACKGROUND:

CBX is looking for approval to continue providing 1 dark fiber connections for the Estacada School District. Due to reimbursement rules from the federal government, each school district has to go out for a competitive bid for any telecommunication service periodically to ensure the school district is receiving the best deal for their services. The Estacada School District just completed such a bid and CBX is the best deal.

### RECOMMENDATION:

Staff respectfully recommends approval to enter into this fiber agreement with the Estacada School District. 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

# Clackamas County

## FIBER OPTIC SERVICE LEVEL AGREEMENT

Estacada School District  
(Customer Name)

### 1. Recitals

**WHEREAS**, Clackamas County (County) desires to provide to Estacada School District (Customer) (each a “Party” and together “the Parties”) the services set forth in this Service Level Agreement (“Agreement”) (“Service” or “Services”), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

**WHEREAS**, Customer desires to use the Services; and

**WHEREAS**, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

### 2. Fiber Optic Network Description

County will provide Customer with point-to-point fiber optic connectivity as detailed in Appendix A on a path designated by the County. County reserves the right, in its sole administrative discretion, to relocate the Fiber at any time provided such relocation does not materially change the Service provided under this Agreement.

### 3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of Fiber, between sites specifically identified in Appendix A. Each site listed in Appendix A will have a single mode fiber termination.

### 4. Construction and Installation Requirements

a. County, when installing Fiber cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the Parties.

b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for Service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the County's Fiber used to provision the Service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice Fiber into existing County fiber optic resources; terminate County's optical Fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

**5. Term of Agreement**

At such time as County completes installation and connection of the necessary facilities and equipment to provide Service herein, County shall then certify and notify Customer in writing that the Service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated with 90 days' notice as herein provided, this Agreement shall continue for a period of five (5) years following the Service Start Date.

**6. Rates**

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for Services as specified in Appendix A.

**7. Payment Options**

a. **Annual Payments**

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. **Alternative Payment Frequency**

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon at least thirty (30) days' advance written notice to Customer.

8. **Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Service Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber, and/or the Service, and/or Customer's use thereof.

9. **Confidentiality**

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law.

10. **Content Control and Privacy**



Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

**11. Assignment and Successors**

Either Party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur. Notwithstanding the foregoing, either Party may assign this Agreement without consent, in connection with a merger, consolidation, reorganization, or sale of substantially all of such Party's assets.

**12. Damage and Third Party Indemnity**

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

**13. Force Majeure**

Neither Party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such Party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the Parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

**14. Consequential Damages**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGREDEATION,

INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

**15. Public Contracting Provisions**

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

**16. Non-Appropriation**

Notwithstanding any other provisions of this Agreement, the Parties hereby agree and understand that any obligation of Customer to obtain Services as provided herein is subject to fund availability and appropriation by Customer for such Services through its adoption of an annual budget. Should funds not be appropriated or be available from Customer during the term of this Agreement, the Agreement shall terminate upon notice to County by Customer and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

**17. Compliance with Laws**

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

**18. Taxes and Assessments**

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" may include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

**19. Termination**

- a. This Agreement shall terminate ninety (90) days following written notice by either Party.
- b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.
- c. If Customer terminates this Agreement for any reason other than that based on non-appropriation or on County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

**20. Default**

1. Either of the following events shall constitute a default:
  - a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or
  - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

**21. Amendment**

Any amendments to this Agreement shall be in writing and shall be signed by all Parties.

**22. No recourse Against the Grantor**

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

**23. Notice**

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by email addressed as follows:

**Notice to the County**

Manager, Clackamas Broadband Express  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045

Fax Number (503) 655-8255

with a copy to

Chief Information Officer  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number: (503) 655-8255

### **Notice to the Customer**

#### **Mail Notice**

Cynthia Rathbun, Tech Manager  
Estacada School District  
255 NE 6<sup>th</sup> Ave  
Estacada, OR 97023  
(503) 630-8513

#### **24. Debt Limitations**

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

#### **25. No Attorney Fees**

No attorney fees shall be paid for or awarded to either Party in the course of any dispute or other recovery under this Agreement. It is the intent of the Parties that each shall bear the costs of its own legal counsel.

#### **26. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that

if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**27. Whole Contract**

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the last date of signature below.

**Clackamas County**

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer**

Estacada School District  
(Customer Name)

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**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 network during the term. 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, 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, as mutually agreed to by the Parties.

**4. Annual Recurring Charges**

<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Monthly Rate (\$)</b>
1   Estacada School District 255 NE 6 <sup>th</sup> Ave Estacada, OR 97023	Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Pair (2 fibers) dark fiber	\$255.00

**5. Nonrecurring Charges**

<b>From</b>	<b>To</b>	<b>Service</b>	<b>Amount</b>
-------------	-----------	----------------	---------------

(Connecting Point A:Site Name & Address)		(Connecting Point B:Site Name & Address)		(\$)
1	Estacada School District 255 NE 6 <sup>th</sup> Ave Estacada, OR 97023	Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Construction	\$0.00

**6. Late Payment Interest**

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

**7. Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

***Remainder of this page intentionally left blank.***

## APPENDIX B

### MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

#### 1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

#### 2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain telephone number (503) 742-4219 to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within four (4) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer twenty one (21) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.



**3. Fiber Optic Network**

- a. County shall maintain the Fiber optic network in good and operable condition and shall repair the Fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the Fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

**4. Restoration**

- a. When restoring damaged Fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental or safety hazards which would restrict or jeopardize any maintenance work.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the Fiber and the location of the damaged Fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within four (4) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the Fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that four (4) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of Fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the Fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance rates and charges for any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

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## APPENDIX C

### FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

#### 1. Fiber and Connector Standards

##### a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

##### b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

##### c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

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