

November 27, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with Oregon City School District to provide
Kindergarten Readiness Partnership & Innovation Services

Purpose/Outcome	Oregon City School District (OCSD) will implement a kindergarten home visit program at 3 Clackamas County Elementary Schools to train a cross section of staff on how to conduct home visits and build partnerships with families to support Kindergarten Readiness Partnership & Innovation Services. OCSD will also offer a Kindergarten Spring Transition workshop for incoming kindergartners and their families to learn about expectations and factors for success prior to starting kindergarten
Dollar Amount and Fiscal Impact	Agreement has a maximum value of \$17,300. No County General Fund involved and no match required.
Funding Source	State of Oregon, Dept of Education through its Early Learning Division
Duration	October 1, 2019 to June 30, 2020
Previous Board Action/Review	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy and secure communities
Counsel Review	County Counsel reviewed and approved this document on October 23, 2019.
Contact Person	Korene Mather 503-650-3339
Contract No.	CFCC 9513

BACKGROUND:

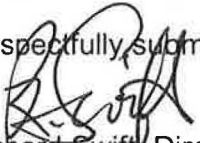
The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests approval of an Intergovernmental Agreement with Oregon City School District to provide community and school partnerships and innovations that result in measureable increases in readiness for kindergarten children ages 0-6 in Clackamas County.

This Grant Agreement is effective upon signature by all parties for services starting on October 1, 2019 and terminating on June 30, 2020. This Agreement has a maximum value of \$17,300.

RECOMMENDATION:

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

Respectfully submitted,


Richard Swift, Director
Health, Housing & Human Services

Healthy Families. Strong Communities.

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

www.clackamas.us

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY CHILDREN, FAMILY & COMMUNITY CONNECTIONS
AND OREGON CITY SCHOOL DISTRICT**

Contract # 9513

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), acting by and through its department of Health, Housing & Human Services, Children, Family & Community Connections Division (CFCC), a political subdivision of the State of Oregon, and Oregon City School District ("AGENCY"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

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

AGENCY agrees to accomplish the following work under this contract:

AGENCY will implement a kindergarten home visit program at Gaffney Lane, Holcomb & Jennings Lodge Elementary schools to train a cross section of staff on how to conduct home visits and build partnerships with families to support the Kindergarten Readiness Partnership & Innovation Program. Each site will also offer a Kindergarten Spring Transition workshop for incoming kindergarteners and their families to learn about expectations and factors for success prior to starting kindergarten.

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

TERMS

1. **Term.** This Agreement shall be effective upon execution for services starting October 1, 2019 and terminating on June 30, 2020.
2. **Scope of Work.** The AGENCY agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A-1 and incorporated herein ("Work").
3. **Consideration.** The funding for this Agreement is the State of Oregon acting by and through its Department of Education, Early Learning Division, through the County, a sum not to exceed **\$17,300** for satisfactorily performing the services outlined in Exhibit A-1: Scope of Work. AGENCY use of funds may not exceed the amount specified in Exhibit B: Program Budget. AGENCY may not transfer funds between budget lines without prior written approval of the COUNTY. At no time may budget modifications change the scope of this agreement. Payments shall be made on a cost reimbursement basis and disbursement will be made monthly in accordance with the requirements outlined in: Exhibit C: Financial Report and Request for Reimbursement.
4. **Payment.** Unless otherwise specified, the AGENCY shall submit monthly requests for reimbursement and required documentation as outlined in Exhibit C: Financial Report and Request for Reimbursement. Work performed and shall include the total amount

billed to date by the AGENCY prior to the current invoice. Payments shall be made to AGENCY following the County's review and approval of invoices submitted by AGENCY. AGENCY shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.

5. **Withholding of Contract Payments.** Notwithstanding any other payment provision of this Agreement, should AGENCY fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, COUNTY shall immediately withhold payments hereunder. Such withholding of payment for causes may continue until AGENCY submits required reports, performs required services, or establishes COUNTY's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of AGENCY.
6. **Record and Fiscal Control Systems.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of (6) years after receipt of final payment under this contract and all other pending matters closed.
7. **Access to Records.** COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of AGENCY, which are directly pertinent to this agreement for the purpose of making audit, examination, excerpts, and transcripts.
8. If an audit discloses that payments to AGENCY were in excess of the amount to which AGENCY was entitled, then AGENCY shall repay the amount of the excess to COUNTY, or the funds will be offset from future payments.
9. **Representations and Warranties.**
 - A. AGENCY represents and warrants to County that AGENCY has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of AGENCY enforceable in accordance with its terms.
 - B. County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of COUNTY enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
10. **Termination.**
 - A. Either the County or the AGENCY may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
 - B. Either the County or the AGENCY may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party

seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.

- C. The County or the AGENCY shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either performance under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

11. Indemnification.

AGENCY shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of AGENCY, its subcontractors, agents, or employees. The AGENCY agrees to indemnify, hold harmless and defend Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the AGENCY or the AGENCY's employees, subcontractors, or agents.

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

- 12. Insurance.** During the term of this agreement, AGENCY, shall maintain in force, at its own expense, each insurance noted below. If self-insured, AGENCY shall provide

documentation to the County of AGENCY's self-insured status by completing the Self-Insurance Certification form provided by the County.

- A. Commercial General Liability.** AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this agreement, Commercial General Liability Insurance covering bodily injury, death, and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
- B. Commercial Automobile Liability.** If the Agreement involves the use of vehicles, AGENCY shall obtain at AGENCY expense, and keep in effect during the term of this agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
- C. Professional Liability.** If the Agreement involves the provision of professional services, AGENCY shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.
- D. Network Security and Privacy Liability.** AGENCY must provide network security and privacy liability insurance for the duration of the Grant and for the period of time in which AGENCY (or its business associated, contractors, or subgrantees) maintains, possesses, stores or has access to Agency or client data, whichever is longer, with a combined single limit of no less than \$1,000,000 per claim or incident. This insurance must include coverage for third party claims and for losses, thefts, unauthorized disclosures, access or use of Agency or client data (which may include, but is not limited to, Personally Identifiable Information ("PII") in any format, including coverage for accidental loss, theft, unauthorized disclosure or use of Agency data.
- E. Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
- F. Directors & Officers Liability.** Directors, officers and organization liability insurance covering the AGENCY's Organization, Directors, Officers, and Trustees actual or alleged errors, omissions, negligent, or wrongful acts, including improper

governance, employment practices and financial oversight – including improper oversight and/or use of Grant Funds and donor contributions – with a combined single limit of no less than \$1,000,000 per claim.

- G. Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured, as well as the but only with respect to AGENCY's activities under this agreement.
- H. Minors.** Contractor shall carry Abuse and Molestation Insurance as an endorsement to the Commercial General Liability policy, in a form and with coverage that are satisfactory to the County, covering damages arising out of actual or threatened physical abuse, mental injury, sexual molestation, negligent: hiring, employment, supervision, investigation, reporting to proper authorities, and retention of any person for whom the Contractor is responsible including but not limited to Contractor and Contractor's employees and volunteers. Policy endorsement's definition of an insured shall include the Contractor, and the Contractor's employees and volunteers. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Any annual aggregate limit shall not be less than \$3,000,000. These limits shall be exclusive to this required coverage. Incidents related to or arising out of physical abuse, mental injury, or sexual molestation, whether committed by one or more individuals, and irrespective of the number of incidents or injuries or the time period or area over which the incidents or injuries occur, shall be treated as a separate occurrence for each victim. Coverage shall include the cost of defense and the cost of defense shall be provided outside the coverage limit.
- I. Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
- J. Insurance Carrier Rating.** Coverage provided by AGENCY must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- K. Certificates of Insurance.** As evidence of the insurance coverage required by this agreement, AGENCY shall furnish a Certificate of Insurance to COUNTY. No agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
- L. Primary Coverage Clarification.** AGENCY coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.

- M. Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the agreement.
- N. Waiver of Subrogation.** AGENCY agrees to waive their rights of subrogation arising from the work performed under this Agreement.

13. General Provisions

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

- E. Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the AGENCY shall promptly deliver these materials to the County.
- F. Hazard Communication.** AGENCY shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection AGENCY (40 CFR Part 302), and any amendments thereto. Upon County's request, AGENCY shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- G. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- H. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- I. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- J. Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- K. Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent,

employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- L. **No Third-Party Beneficiary.** AGENCY and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- M. **Subcontract and Assignment.** AGENCY shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve AGENCY of any of its duties or obligations under this Agreement.
- N. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- O. **Survival.** All provisions in Sections 9, 11, and 13 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- P. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. **Time is of the Essence.** AGENCY agrees that time is of the essence in the performance this Agreement.
- R. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- S. **Force Majeure.** Neither AGENCY nor County shall be held responsible for delay or default caused by events outside of the AGENCY or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, AGENCY shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- T. **Confidentiality.** AGENCY acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to

or acquire confidential information. Any and all information of any form obtained by AGENCY or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). AGENCY agrees to hold Confidential Information in strict confidence, using at least the same degree of care that AGENCY uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

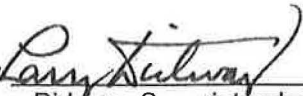
U. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

(Signature Page Attached)

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

AGENCY

Oregon City School District
417 12th Street
Oregon City, OR 97045

By: 

Larry Didway, Superintendent

Date: 10.24.2019

EIN: 93-60000264

CLACKAMAS COUNTY

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

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing and Human Services

Date: _____



Korene Mather, Interim Director
Children, Family & Community Connections

Date: 11/5/2019

- Exhibit A-1: Scope of Work
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Demographic Report
- Exhibit A-4: Client Feedback Survey and Report
- Exhibit B: Program Budget
- Exhibit C: Performance Reporting Schedule
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report
- Exhibit E: Program Requirements

November 27, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Oregon Department of Transportation Rail and Public Transit Division for HB2017 State Transportation Improvement Fund Discretionary Program Funds for the Regional Integrated Fare Collection System Analysis Project

Purpose/Outcomes	The purpose of this grant is to fund a study to examine the feasibility of implementing an integrated regional fare collection system that would simplify the riding experience for customers travelling between multiple transportation providers, and to gain travel trend information for reporting and planning purposes
Dollar Amount and Fiscal Impact	The maximum grant award is \$108,000. The grant would be funded through the Oregon Department of Transportation
Funding Source	HB2017 State Transportation Improvement Fund (STIF) Discretionary Funds. The match rate is 10% and will be paid with Social Services funds and contributions from the regional transit partners. County General Funds are not involved.
Duration	Upon signature of both parties until June 30, 2021
Previous Board Action	None.
Strategic Plan Alignment	1. This aligns with the Social Service Division's strategic priority to provide services that allow individuals and families to remain in their own homes and communities. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	County Counsel reviewed and approved this document on 10/15/19
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	ODOT Agreement No. 33802/ H3S #9533

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval of an intergovernmental agreement with the Oregon Department of Transportation Rail and Public Transit Division to fund a study to examine the feasibility of implementing an integrated regional fare collection system to simplify the riding experience for customers travelling between multiple transportation providers, and to gain travel trend information for reporting and planning purposes. Partners for this project include Canby Area Transit (CAT), Clackamas County (Mt Hood Express), Sandy Area Metro Transit (SAM), South Metro Area Regional Transit (SMART), and the South Clackamas Transportation District (SCTD).

The partners are interested in exploring an electronic fare system that meets criteria to include simple and convenient customer experience, seamless transfers between providers, flexible and scalable platform that is readily accessible from multiple locations, provides ride data, and can be utilized in the future for a fare reciprocity program between providers. Neighboring transit systems will in included as

part of the feasibility study. The study will conduct an analysis of various tools using both existing studies and new products in the market and determine the best fit.

The HB 2017 State Transportation Improvement Fund Discretionary grant is for \$108,000. The match requirement of \$12,000 will be paid equally by the five partner organizations. Social Services' share will be paid by fund balance. No County General Funds are involved.

RECOMMENDATION:

Staff recommend recommends the Board approval of this agreement and that Richard Swift, H3S Director, be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Swift', written over a faint circular stamp or watermark.

Richard Swift, Director
Health, Housing and Human Services Department

**COUNTY COUNSEL DOCUMENT REVIEW
TRANSMITTAL FORM**

DATE: 10/14/19

TO: COUNTY COUNSEL

ATTORNEY: Kathleen Rastetter

FROM: Teresa Christopherson (name)

EXTENSION: 5718

DEPARTMENT/DIVISION: Social Services

BILL TO Social Services (Department/Division to be billed)

TYPE OF DOCUMENT: IGA


NAME OF DOCUMENT: Agreement No. 33802 with ODOT Rail and Public Transit Division for STIF Discretionary Project

REQUESTED RETURN DATE: 10/21/19

Comment: No concern from my perspective Thanks, Teresa

=====

APPROVED AS TO FORM:

County Counsel: 

Date: 10/15/19

Counsel Comments:

RAIL AND PUBLIC TRANSIT DIVISION OREGON DEPARTMENT OF TRANSPORTATION

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Rail and Public Transit Division, hereinafter referred to as "State," and **Clackamas County**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **October 1, 2019** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2021** (Expiration Date). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: Project Description and Budget

Exhibit B: Financial Information

Exhibit C: Insurance Requirements

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

3. **Project Cost; Grant Funds.** The total project cost is estimated at **\$120,000.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **\$108,000.00** in Statewide Transportation Improvement Funds for eligible costs described in Section 6 hereof.
4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <http://www.oregon.gov/odot/pt/>. If Recipient is unable to access OPTIS, reports must be delivered to ODOTPTDReporting@odot.state.or.us. Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be necessary to comply with federal or state reporting requirements.
6. **Disbursement and Recovery of Grant Funds.**
 - a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or delivered to ODOTPTDReporting@odot.state.or.us. Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a

result of financial review or audit.

- b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.
 - c. **Recovery of Grant Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to State. Recipient shall return all Misexpended Funds to State promptly after State's written demand and no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 14 days after the earlier of expiration or termination of this Agreement.
7. **Representations and Warranties of Recipient.** Recipient represents and warrants to State as follows:
- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
 - b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
 - c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
 - d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded by any state or federal agency or if circumstances change that may affect this status, including without limitation upon any relevant

indictments or convictions of crimes.

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

8. **Records Maintenance and Access; Audit.**

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the Grant Funds were expended.
- d. **Audit Requirements.**
 - i. Recipient shall, at Recipient's own expense, submit to State, Public Transit Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to ODOTPTDreporting@odot.state.or.us, a copy of, or electronic link to, any annual audit covering the funds expended under this Agreement by Recipient or a party to any subagreement with Recipient, as well as the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.
 - ii. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

9. **Recipient Subagreements and Procurements**

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient agrees to provide State with a copy of any signed subagreement upon request by State. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to State within ten (10) days of its being discovered.

b. **Subagreement indemnity; insurance.**

Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

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

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

10. **Termination**

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
- i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Recipient; or
 - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding

under this Agreement.

- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. General Provisions

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

With respect to a Third Party Claim for which State is jointly liable with Recipient (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

With respect to a Third Party Claim for which Recipient is jointly liable with State (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. **Reserved.**
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or

any other party, organization or individual.

- f. **No Third Party Beneficiaries.** State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

- g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- i. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. **Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms

are used in ORS 30.265, and shall not make representations to third parties to the contrary.

- l. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Clackamas County/State of Oregon
Agreement No. 33802

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

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Rail and Public Transit Division Administrator.

SIGNATURE PAGE TO FOLLOW

Clackamas County, by and through its

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Teresa Christopherson
Social Services Department
Oregon City, OR 97045
1 (503) 650-5718
teresachr@co.clackamas.or.us

State Contact:

Jason Kelly
555 13th Street NE
Salem, OR 97301
1 (503) 731-3320
Jason.d.kelly@odot.state.or.us

State of Oregon, by and through its
Department of Transportation

By _____
H. A. (Hal) Gard
Rail and Public Transit Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____ Jason Kelly

Date _____ 09/30/2019

APPROVED AS TO LEGAL SUFFICIENCY

(For funding over \$150,000)

N/A

November 27, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement
with the Clackamas County Development Agency
for the NCRA Housing Rehabilitation and Home Buyer Assistance Programs

Purpose/Outcomes	This Agreement between the Community Development Division and the Development Agency continues a past agreement on program guidelines and funding to the Community Development Division to administer the Housing Rehabilitation and Homebuyer Assistance Programs in the North Clackamas Revitalization Area ("NCRA").
Dollar Amount and Fiscal Impact	NCRA funds of \$60,000 per year for 6 years for a total of \$360,000 for program administration.
Funding Source	NCRA funds. No County General Funds are involved.
Duration	Effective July 1, 2018 and ending June 30, 2024
Previous Board Action	Original Agreement signed September 20, 2007 – 092007B2
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
County Counsel	The Agreement was approved by County Counsel on 11/7/2019
Contact Person	Mark Sirois, Housing and Community Development - (503) 655-5664
Contract No.	H3S 9535

BACKGROUND:

The Community Development Division of the Health, Housing and Human Services Department requests the approval of this Intergovernmental Agreement with the Clackamas County Development Agency to fund the administration of the Housing Rehabilitation and Homebuyer Assistance Programs in the North Clackamas Revitalization Area ("NCRA"). The H3S Community Development Division has been administering this program for the Development Agency since 2007. The original agreement renewed each year until June 30, 2018.

Healthy Families. Strong Communities.

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

www.clackamas.us

NCRA funds will also fund an estimated 15 home repair loans and grants per year to residents in the North Clackamas Revitalization Area.

RECOMMENDATION:

We recommend the approval of this Agreement by the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift". The signature is written in a cursive, flowing style.

Richard Swift, Director
Health, Housing and Human Services

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN
CLACKAMAS COUNTY
AND
CLACKAMAS COUNTY DEVELOPMENT AGENCY**

I. Purpose

- A. This Intergovernmental Agreement (“Agreement”) is entered into by and between the Clackamas County, by and through its Community Development Division (“CDD”), and the Clackamas County Development Agency (“AGENCY”) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship between CDD and AGENCY, with the common goal of developing, implementing and administering Housing Rehabilitation and Homebuyer Assistance Programs in the North Clackamas Revitalization Area (“NCRA”), herein collectively referred to as the PROGRAM.

II. Scope of Cooperation

- A. Under this Agreement, the responsibilities of AGENCY shall be as follows:
 - 1. The AGENCY shall work with the CDD to develop a specific list of responsibilities for PROGRAM administration and shall update the list as necessary with the agreement of the CDD.
 - 2. The AGENCY shall conduct telephone and online inquiries with potential applicants and provide application packages to interested parties.
 - 3. The AGENCY shall perform an initial screening of applications for PROGRAM loans and forward those meeting preliminary qualifications to CDD for further processing and evaluation.
 - 4. The AGENCY shall work with the CDD throughout the PROGRAM loan approval process and provide consultation and assistance as necessary during the review of applications.
 - 5. The AGENCY shall review CDD recommendations for each PROGRAM loan application and inform the CDD of the AGENCY’s approval or denial of each application and any conditions attached to a decision.
 - 6. The AGENCY shall provide consultation to the CDD in the service of outstanding PROGRAM loans and shall provide direction for dealing with violations of loan terms or requests for subordination.
- B. Under this Agreement, the responsibilities of the CDD will be as follows:
 - 1. The CDD shall work with the AGENCY to develop a specific list of responsibilities for PROGRAM administration and shall update the list as necessary with the agreement of the AGENCY.

2. The CDD shall conduct telephone and online inquiries with potential applicants, provide application packages to interested parties, and forward PROGRAM applications to the AGENCY for initial screening.
3. The CDD shall process and review PROGRAM loan applications to determine eligibility under PROGRAM guidelines.
4. The CDD shall provide personnel, such as Rehab Advisors, for rehabilitation loans as required to assist applicants and carry out the PROGRAM loan approval process.
5. The CDD shall work with the AGENCY throughout the PROGRAM loan approval process and consult with the AGENCY as necessary during the review of applications.
6. The CDD shall inform the AGENCY of the results of each application review and provide the AGENCY with a recommendation of approval or denial.
7. The CDD will service each outstanding PROGRAM loan until the loan is repaid or forgiven and will inform the AGENCY of any violations of loan terms or requests for subordination.

III. Compensation

- A. AGENCY agrees to reimburse CDD for all staff and loan costs associated with the administration of the PROGRAM in an amount not to exceed sixty thousand dollars (\$60,000.00) annually, with a total contract not to exceed amount of three hundred and sixty thousand dollars (\$360,000.00).
 1. AGENCY will reimburse CDD each quarter for the amount of PROGRAM funds loaned and for the actual costs of labor, fringe and overhead associated with implementing and administering the PROGRAM (“Administrative Costs”).
 2. The obligations of AGENCY are expressly subject to AGENCY receiving funds for the PROGRAM, and in no event shall AGENCY’s financial contribution exceed the amount finally granted, released and approved for the PROGRAM.
- B. Payments shall be made on requests for reimbursement submitted to AGENCY on a quarterly basis. Payment requests will detail loan costs and expenditures for allowable Administrative Costs incurred during that quarter. All requests for payment are subject to the approval of AGENCY and shall be submitted to:

Ken Itel
Clackamas County Development Agency
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

IV. Liaison Responsibility

- A. Ken Itel, or such other individual as the Agency may designate from time to time, will act as liaison from the AGENCY.
- B. Mark Sirois, or such other individual as the CDD may designate from time to time, will act as liaison from the CDD.

V. Special Requirements

- A. The CDD and the AGENCY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the CDD agrees to indemnify, save harmless and defend the Agency, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the CDD has a right to control.

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

- C. **Assignment and Subcontracting.** The CDD shall undertake the work outlined in this Agreement and shall only assign portions of the work with written approval from the AGENCY.
- D. **Conflict of Interest.**
 - 1. **Interest of Officers, Employees, or Agents.** No officer, employee, or agent of the CDD or the AGENCY who exercises any functions or responsibilities in connection with the planning and execution of activities under the AGENCY, or any other person who exercises any functions or responsibilities in connection with the PROGRAM during their tenure or for one year thereafter, shall obtain a personal or financial interest in or benefit from this Agreement, or any contract, subcontract or agreement arising therefrom, either for themselves or for persons with whom they have family or business ties without appropriate prior County waiver; and AGENCY shall take appropriate steps to assure compliance.

2. **Interest of Certain Federal Officials.** No member of or delegate to the Congress of the United States and no Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.

- E. **Compliance With Laws, Including Non Discrimination.** The AGENCY and the CDD shall comply with all federal, state, and local laws, statutes, regulations, and rules applicable to the services provided under this Agreement, including all requirements prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, religion, or the presence of any mental or physical handicap. These requirements are specified in ORS Chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

- F. **Public Information.** The CDD and the AGENCY shall cooperate in public information efforts, such as contacts with neighborhood or consumer advocacy organizations, press releases, etc. In all news releases and other public notices relating to activities under this Agreement the CDD shall include information identifying the source of funds as the Clackamas County Development Agency.

- G. **Evaluation.** The CDD agrees to participate with the AGENCY in any evaluation project or performance report, as designed by the AGENCY or the appropriate federal or state department, and to make available all information required by any such evaluations process.

- H. **Audits and Inspections by the Agency.** The CDD will ensure that any duly authorized representative, as identified by the AGENCY, shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this Agreement for the purpose of making surveys, audits, examinations, excerpts and transcripts. The CDD shall not be required to provide any information which in any way would deny the rights of confidentiality to a family or individual seeking or receiving assistance from the program.

- I. **Record and Fiscal Control System.** The CDD agrees to comply with the policies, guidelines and requirements with respect to funds pursuant to this Agreement. All financial and programmatic records, supporting documents, statistical records, and other records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.

- J. **Access to Records.** The AGENCY, the CDD, the State of Oregon and the federal government, and their duly authorized representatives shall have access to the books,

documents, papers, and records of the AGENCY and CDD which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.

- K. **Citizen Participation.** The AGENCY and the CDD shall compile and maintain records including narratives or other documentation describing the process used to inform citizens concerning the program.

VI. Amendment

- A. This Agreement may be amended at any time with the concurrence of both parties.
- B. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

- A. The term of this Agreement is a period beginning July 1, 2018 and ending June 30, 2024. The parties acknowledge that services have been performed pursuant to this Agreement prior to its execution and hereby ratify any work performed in accordance with the terms of this Agreement.

VIII. Default and Termination

- A. Default: The failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement.
1. The injured party shall give written notice of default to the party in default, specifying the default complaint of the injured party.
 2. If the party in default commences to cure, correct, or remedy the default within thirty (30) days after receipt of a notice specifying the default, and thereafter diligently prosecutes the cure, correction, or remedy to completion, then such party shall not be in default.
 3. Default shall be grounds for termination of the Agreement.
- B. Termination: This Agreement may be suspended or terminated prior to the expiration of its term, and the automatic renewal cancelled, by:
1. Written notice provided to the AGENCY from the CDD before any materials or services for improvements are procured, or;
 2. Written notice provided by the AGENCY of a material failure by the CDD to comply with any term of this Agreement, or;

3. Written notice provided by the CDD of a material failure by the Agency to comply with any term of this Agreement,
4. Written notice by either party that the terminating party failed to receive expenditure authority sufficient to allow the terminating party, in the exercise of its reasonable administrative discretion, to continue performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that the terminating party is prohibited from paying for such work from the planned funding source; or
4. Mutual agreement by CDD and AGENCY.

C. A termination of the Agreement-

1. Does not eliminate the respective responsibilities of the CDD and the Agency to perform their commitments through the date of the termination; and
2. Becomes effective seven (7) days after receipt of the written notice of termination.

IX. General Provisions.

- A. Merger Clause. This Agreement embodies the entire Agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.
- B. Assignment. No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of all other parties.
- C. Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be effected or impaired thereby.
- D. Notices. Any notice herein required or permitted to be given shall be given in writing and shall be effective when actually received, and may be given by hand delivery or by United States mail, first-class postage prepaid, addressed to the parties as follows.

For the CCD: Housing Rehabilitation Manager
 Community Development Division
 2051 Kaen Road, Suite 245
 Oregon City, OR 97045

For the AGENCY: NCRA Program Manager
 Clackamas County Development Agency
 9101 SE Sunnybrook Blvd.
 Clackamas, OR 97015

INTERGOVERNMENTAL AGREEMENT

Clackamas County Community Development Division and Clackamas County Development Agency

Page 7

- E. Oregon Law and Forum. This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- F. Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- G. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- H. No Third-Party Beneficiary. AGENCY and CCD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- I. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

[Signature Page Follows]

INTERGOVERNMENTAL AGREEMENT

Clackamas County Community Development Division and Clackamas County Development Agency

Page 8

CLACKAMAS COUNTY

**CLACKAMAS COUNTY
DEVELOPMENT AGENCY**

Chair

Chair

Date

Date