

# AGENDA

**Thursday, January 28, 2021 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2021-06

**CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**\*\*\*Wild Fire Updates**

**\*\*\*COVID Updates**

**I. HOUSING AUTHORITY CONSENT AGENDA**

1. Approval to execute a Construction contract between the Housing Authority of Clackamas County and Grace Point Contracting, LLC for Modernization of 6606 Hemlock project. There is a onetime fee of \$162,000 that HUD Federal Capital Grants Fund, no general funds are involved. - HACC
2. Project Turnkey funding for Red Fox Property and seeking approval to execute real estate documents. - HACC

**II. PUBLIC COMMUNICATION** *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

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

**A. Health, Housing & Human Services**

1. Approval to Accept Oregon Dept of Education Grant Amendment 1 for Coordinated Enrollment for Preschool Promise. Grant amendment increases award by \$170,500 for a total award amount of \$193,500. No general funds. - CFCC
2. Approval of amendment #2 to Intergovernmental Revenue Agreement with the State of Oregon, Department of Human Services (DHS), for the operation of the Supplemental Nutrition Assistance Program (SNAP) Employment & Training. This amendment will increase the contract by \$57,600 for a new total of \$156,628.85. No general funds. - CFCC

3. Approval of a Revenue Grant Amendment 1 with Oregon Department of Education, Early Learning Division for Healthy Families Oregon. Increases award by \$91,823 for a total award amount of \$1,792,540.58. No general funds. – *CFCC*
4. Approval of an Amendment #14 to Intergovernmental Agreement #159159 with the State of Oregon, Acting by and through its Oregon Health Authority, for the operation and financing of Community Mental Health, Addiction Treatment, Recovery & Prevention Services, and Problem Gambling Programs. Adds \$193,913.73 to the value of the agreement, new maximum value is \$13,988,283.48. No general funds. – *Behavioral Health*
5. Approval of the Amended and Restated County-Based Services Agreement with Health Share of Oregon for Public Health and Behavioral Health Care and Services. Revenue contract maximum value \$3,764,939. No general funds. – *Behavioral Health*
6. Approval of an Amendment to an Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority, for Choice Model Services. Amendment value is \$847,892 bringing the maximum value to \$2,119,732.51 and is funded through Oregon Health Authority. – *Behavioral Health*
7. Approval of Amendment #3 to the Intergovernmental Agreement with State of Oregon, Oregon Health Authority, for the Foodborne Illness Prevention Program. Increase by \$90,069 bringing the maximum value to \$715,859. No general funds. – *Public Health*
8. Approval of Amendment #16 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County. Contact increased by \$72,789 bringing maximum value to \$11,730,162. No general funds – *Public Health*
9. Approval of Amendment #2 to an Intergovernmental Grant Agreement With the State of Oregon for a Term Extension to Complete Services to Assist Homeless Shelter Challenges Posed by the COVID-19 Pandemic. No funds involved in this amendment. – *Social Services*

**B. Department of Transportation & Development**

1. Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Jennings Ave: OR99E to Oatfield Rd. Project and Authorizing Good Faith Negotiations and Condemnation Actions. The budget for this project is estimated to be \$992,481 funded through Federal Surface Transportation Program and County Road Funds.
2. Approval of Intergovernmental Agreement between Clackamas County and the City of Gladstone for Traffic Signal Maintenance and Transportation Engineering Services. This is revenue that will vary between \$500 and \$3,000 annually.
3. Approval of Supplemental Project Agreement No. 34029 with Oregon Department of Transportation (ODOT) for the OR 211 at Canby Marquam Highway Project. Cost will be less than \$100 annually.
4. Approval of Goods and Services Contract with Baker Rock Crushing Co., to provide Aggregate Rock for Clackamas County. \$75,000 annually with a total contract of \$225,000, funded through DTD Transportation Maintenance. – *Procurement*

5. Approval of Goods and Services Contract with Jim Turin and Sons, Inc. dba Mt. Hood Rock Products, Inc. to provide Aggregate Rock for Clackamas County. \$75,000 annually with a total contract of \$225,000, funded through DTD Transportation Maintenance. – *Procurement*
6. Approval of Goods and Services Contract with Lakeside Industries, Inc. to provide Asphaltic Concrete for Clackamas County. \$700,000 annually with a total contract of \$2,100,000 funded through DTD Transportation Maintenance. – *Procurement*
7. Approval of Goods and Services Contract with Jim Turin and Sons dba, Mt. Hood Asphalt Products, Inc., to provide Asphaltic Concrete for Clackamas County. \$700,000 annually with a total contract of \$2,100,000 funded through DTD Transportation Maintenance. – *Procurement*
8. Approval of Goods and Services Contract with Baker Rock Crushing Co., to provide Asphaltic Concrete for Clackamas County. \$700,000 annually with a total contract of \$2,100,000 funded through DTD Transportation Maintenance. – *Procurement*
9. Approval of Goods and Services Contract with South County Asphalt, LLC, to provide Asphaltic Concrete for Clackamas County. \$700,000 annually with a total contract of \$2,100,000 funded through DTD Transportation Maintenance. – *Procurement*

**C. Business & Community Services**

1. Approval of a Memorandum of Agreement among the U.S. Army Corps of Engineers, The Oregon State Historic Preservation Office, and The Advisory Council on Historic Preservation for Clackamas County to Act as Fund Manager for the Jennings Lodge Camp Meeting Site and Retreat Center

**IV. DEVELOPMENT AGENCY 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.)*

1. Approval of a Cooperative Improvement Agreement with the Oregon Department of Transportation for the Clackamas Regional Center Mobility Improvement Project. The agency will reimburse ODOT up to \$60,000 for costs.

**V. WATER ENVIRONMENT SERVICES 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.)*

1. Approval of an Amendment #3 to Contract #1652 with Murraysmith, Inc. for the Pump Station Rehabilitation and Upgrades Project – *Procurement*

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. COMMISSIONERS COMMUNICATION**

**NOTE: Regularly scheduled Business Meetings are televised and broadcast on the Clackamas County Government Channel. These programs are also accessible through the County's Internet site. DVD copies of regularly scheduled BCC Thursday Business Meetings are available for checkout at the Clackamas County Library in Oak Grove. 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 21, 2021

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Approval to execute a Construction contract between the Housing Authority of Clackamas County and Grace Point Contracting, LLC for Modernization of 6606 Hemlock project

<b>Purpose/Outcomes</b>	Approval to execute a Construction contract between Housing Authority of Clackamas County and Grace Point Contracting, LLC for modernization project
<b>Dollar Amount and Fiscal Impact</b>	One-time expense not to exceed \$162,000.00
<b>Funding Source(s)</b>	HUD Federal Capital Grant Funds No County General Funds are involved
<b>Duration</b>	120 days from date of notice to proceed
<b>Previous Board Action</b>	none
<b>Strategic Plan Alignment</b>	1. Sustainable and affordable housing 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	Andrew Naylor, September 23, 2020
<b>Procurement Review</b>	Per Resolution No. 1936, HACC adopted the Local Contract Review Board rules for HACC Procurements. HACC conducts its own procurements following its procurement handbook
<b>Contact Person</b>	Jill Smith, HACC Executive Director (503) 742-5336
<b>Contract Number</b>	Contract No. 10018

**BACKGROUND:**

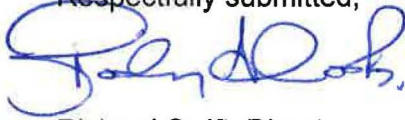
The Housing Authority of Clackamas County (HACC), a division of the Health, Housing and Human Services Department (H3S), requests approval to execute a construction contract between HACC and Grace Point Contracting, LLC for the modernization of a Public Housing unit that was partially destroyed by a fire. The project will bring the unit and site conditions up to current HUD standards. HACC publicly advertised for bids to repair and bring the unit back to its original condition with new materials. Bringing the unit back to original condition in a timely manner will allow HACC to maintain its High Performer status, prevent safety hazards and provide an energy efficient public housing unit.

Grace Point Contracting, LLC was selected through a competitive Invitation for Bids process. The scope of work includes concrete site work, fencing, doors, roof, windows, siding, heating systems, electrical upgrades, kitchens, bathrooms, plumbing, flooring, cabinets and painting.

RECOMMENDATION:

Staff recommends the Board approve the contract. Staff also recommends the Board authorize Richard Swift, H3S Director, to sign the contract on behalf of the Housing Authority Board of Commissioners.

Respectfully submitted,

 has deputy 1 for

Richard Swift, Director  
Health, Housing and Human Services

**FORM OF CONTRACT**  
**PROJECT #20008**  
**Contract #c019-20**  
H3S Contract # 10018

**THIS AGREEMENT** made this 29 day of December in the year 2020 by and between **GRACE POINT CONTRACTING, LLC. (Contractor)**, a business entity authorized to do business in the State of Oregon, hereinafter called the "Contractor," and **the Housing Authority of Clackamas County** hereinafter call the "PHA."

**WITNESSETH**, that the Contractor and the PHA for the consideration stated herein mutually agreed as follows:

**ARTICLE 1. Statement of Work.** The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work required for **MODERNIZATION OF 6606 HEMLOCK PROJECT**, a prevailing wage project, #20008, in strict accordance with the Scope of Work referred to herein, which said Scope of Work and any Addenda are incorporated herein by reference and made a part hereof.

**ARTICLE 2. The Contract Price.** The PHA shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in the Scope of Work, a sum not to exceed one hundred sixty two thousand dollars and zero cents. (\$162,000.00).

**ARTICLE 3. Contract Dates.** The following critical dates are hereby set for the MODERNIZATION OF 6606 HEMLOCK. Time is of the essence.

- A. START DATE: February 1, 2021**
- B. SUBSTANTIAL COMPLETION DATE: N/A**
- C. FINAL COMPLETION DATE: June 3, 2021**

**ARTICLE 4. Contract Documents.** The Contract shall consist of the following component parts:

- a. This Agreement
- b. Bid Documents
- c. HUD General Conditions
- d. Addendum(s), if any
- e. Special Conditions
- f. Scope of Work

This instrument, together with the other documents enumerated in this Article 4, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, form the Contract. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article 4 shall govern, except as otherwise specifically stated. The various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

**MODERNIZATION OF 6606 HEMLOCK – PROJECT #20008**  
**HOUSING AUTHORITY OF CLACKAMAS COUNTY**  
P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

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**ARTICLE 5.** Responsibility for Damages/Indemnity. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its subcontractors, employees, guests, visitors, invitees and agents.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by PHA) and hold harmless the PHA and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Article 5; (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 5.

In claims against any person or entity indemnified under this Article 5 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 5 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**ARTICLE 6.** No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as described in ORS 279C.100, the employee shall be paid at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and all work the employee performs on Saturday and on any legal holiday specified in [ORS 279C.540](#). All subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. Contractor shall comply with the prohibition set forth in ORS 652.220, compliance of which is a material element of the Contract and a failure to comply is a breach entitling PHA to terminate the Contract for cause.

**ARTICLE 7.** Under the provisions of ORS 279C.515, if the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or

a subcontractor by any person in connection with this contract as the claim becomes due, the proper officer representing the PHA may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of the contract.

If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

**ARTICLE 8.** The Contractor agrees to pay daily, weekly, weekend and holiday overtime as required by ORS 279C.520.

**ARTICLE 9.** The Contractor agrees that all employees/workers working on this project, whether employed by the Contractor or any subcontractor, shall be given written notice of the number of hours per day and days per week they may be required to work.

**ARTICLE 10.** The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

**ARTICLE 11.** The Contractors agrees to pay no less than the applicable state or federal prevailing wage rate, whichever is higher per ORS 279C.830(1)(b).

**ARTICLE 12.** The Contractor agrees to have a performance bond and payment bond in place before starting any work on the project per ORS 279C.380. The Contractor agrees to have filed a public works bond with the Construction Contractors Board before starting any work on the project.

**ARTICLE 13.** The Contractor agrees that every subcontract shall include a provision requiring all subcontractors to have a public works bond filed with the Construction Contractors Board before starting any work on the project per ORS 279C.830.

**ARTICLE 14.** Contractor certifies that both it and any of its subcontractors are (1) Registered to conduct business in the state of Oregon; (2) are actively licensed with the Oregon Construction



**MODERNIZATION OF 6606 HEMLOCK – PROJECT #20008**  
**HOUSING AUTHORITY OF CLACKAMAS COUNTY**  
P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

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Contractors Board; (3) are bonded and insured in amounts that meet or exceed the county's minimal requirements.

**ARTICLE 15. CONTRACTOR shall:**

- (1) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.
- (2) Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.167.

**ARTICLE 16.** The Contractor shall include in each subcontract those provisions required under ORS 279C.580.

**ARTICLE 17.** For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

**ARTICLE 18. Tax Laws.**

18.1 The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with:

- a. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- b. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- c. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- d. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

18.2 Contractor represents and warrants that, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement. Further, any violation of Contractor's warranty in this Agreement that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle PHA to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to:

- a. Termination of this agreement, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to PHA's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. PHA shall be entitled to recover any and all damages suffered as the result of PHA's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

These remedies are cumulative to the extent the remedies are not inconsistent, and PHA may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

**ARTICLE 19 Liquidated damages**

The Contractor acknowledges that PHA will sustain damages as a result of the Contractor's failure to substantially complete the work authorized under this Contract and in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the project, and costs associated with Contract administration and use of temporary facilities.

- 10.1 Liquidated Damages shall be as follows if the actual Final Completion exceeds the required date of Final Completion:
  - 10.1.1. \$500.00 per each Calendar day after the set Final Completion date.

**ARTICLE 20. Additional Terms**

- (1) **Execution and Counterparts.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
- (2) **Integration.** The Contract Documents constitute the entire agreement between the Parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (3) **Governing Law.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- (4) **Debt Limitation.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- (5) **No attorney fees.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- (6) **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- (7) **No Third Party Beneficiaries.** PHA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- (8) **Waiver.** The failure of PHA to enforce any provision of this Contract shall not constitute a waiver by PHA of that or any other provision.
- (9) **Merger.** This Contract constitutes the entire agreement between the parties with respect to the subject matter referenced therein. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature hereto of its authorized representative, is an independent contractor, acknowledges having read and understood this contract, and contractor agrees to be bound by its terms and conditions.
- (10) **Responsibility for Taxes.** Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Agreement or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session).

MODERNIZATION OF 6606 HEMLOCK – PROJECT #20008  
HOUSING AUTHORITY OF CLACKAMAS COUNTY  
P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

IN WITNESS WHEREOF, the parties hereto have caused this Instrument to be executed in three original counterparts as of the day and year first above written.

**Grace Point Contracting, LLC**

(Contractor)

  
(Authorized Representative's Signature / Date)

**Ulian Julian Erofeeff, Owner**

(Authorized Representative's Name / Title - Print or Type)

**47-2858317**

(Federal I.D. Number)

**375 N 1<sup>st</sup> Street, Woodburn, OR 97071**

(Business Address - Street, City, State, Zip)

**205401**

(State of Oregon CCB License Number)

**HOUSING AUTHORITY OF  
CLACKAMAS COUNTY BOARD**

Commissioner Tootie Smith, Chair

Commissioner Sonya Fischer


Commissioner Martha Schrader

Commissioner Paul Savas

Commissioner Mark Shull

Resident Commissioner Ann Leenstra

Signing on Behalf of the Housing Authority Board

  
Richard Swift, Director

Health, Housing & Human Services Department

**HOUSING AUTHORITY OF CLACKAMAS  
COUNTY**

**CERTIFICATION**

I Ulian Julian Erofeeff  
certify that I am the Owner  
at the corporation named as Contractor herein, that Ulian Julian Erofeeff  
who signed this Contract on behalf of the Contractor, was then Owner  
of said corporation; that said Contract was duly signed for and in behalf of said corporation by  
authority of its governing body, and is within the scope of its corporate powers.

  
(Authorized Representative's Signature / Date)

12/29/20

**Ulian Julian Erofeeff, Owner**

(Authorized Representative's Name / Title - Print or Type)

(Print or type the names underneath all signatures)



January 28, 2021

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

In alignment with Board direction to seek Project Turnkey funding from the State of Oregon, our Phase I application has been submitted and approved. We have been directed by Oregon Community Foundation (“OCF”) consultants to expedite purchase of a qualifying property. We are seeking approval to enter into a Purchase & Sale Agreement between the Housing Authority of Clackamas County and Larch Investors, Inc. an Oregon Domestic Business Corporation (“Seller”) (owner) for the Red Fox property and approval to execute real estate documents pertaining to the acquisition.

<b>Purpose/Outcomes</b>	Approval to enter into a Purchase & Sale agreement between the Housing Authority of Clackamas County and Larch Investors Inc. (owner) for the Red Fox Motel, Little Fox Storage, and land located at 600 SW Beech Road in the City of Estacada, County of Clackamas, Oregon and approval to execute real estate documents pertaining to the acquisition of the Red Fox Motel, Little Fox Storage and the land.
<b>Dollar Amount and Fiscal Impact</b>	Not to exceed \$3.1M or appraised value whichever is lower
<b>Funding Source(s)</b>	All funds for the acquisition as well as rehabilitation for immediate shelter use will be provided by grant funding from the Oregon Community Foundation - Project Turnkey Funding. Operational funding will come from winter shelter funding effective immediately through June 30, 2021 and from the Affordable Housing and Services fund effective July 1 2021 for shelter operations.
<b>Previous Board Action</b>	Board directed H3S to apply for Project Turnkey funding for acquisition of a motel property for use as shelter for wildfire impacted residents and underserved populations.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Sustainable and affordable housing</li> <li>2. Individuals and families in need are healthy and safe</li> <li>3. Ensure safe, healthy and secure communities</li> </ol>
<b>Counsel Review</b>	01/21/21
<b>Contact Person</b>	Jill Smith, HACC Executive Director (503) 502-9278
<b>Contract Number</b>	N/A

**BACKGROUND:**

The HACC in partnership with Clackamas County Social Services submitted a Project Turnkey application for funding. The application outlined a partnership whereby the HACC would be the asset owner and Social Services would provide operational funding until July 1, 2021 when Affordable Housing and Services funding will be redirected to serve the rural areas of Clackamas County. Operations will be provided on a contract basis with a homeless services non-profit agency with a focus on moving people out of the transitional shelter and into permanent housing.

HACC has been approved by OCF to identify and initiate a purchase and sale agreement with a motel property, originally the Econo Lodge was identified but due to identified due diligence challenges and a strong desire to focus this funding outside the urban growth boundary, our focus was redirected to prioritize wildfire impacted communities.

The Red Fox Hotel location was identified with the assistance of Skip Rotticci, a contracted Broker as well as Tom Kemper, a consultant provided by OCF to assist applicants. The following criteria were used to evaluate properties: location, zoning, number of units, unit size, ADA compliance, cost of purchase, the amount of funding likely to be allocated for Clackamas County out of the \$30 million, property condition, necessary rehab to use immediately as a shelter and how quickly the purchase process could proceed. In order to qualify for the Project Turnkey funds, the identified property must be able to be used within 75 days of funding with due diligence preferred to be completed in 30 days.

### **Alignment with Project Turnkey Intention**

The Red Fox Hotel better aligns with project Turnkey intentions to serve residents of wildfire impacted communities and provides a rare opportunity for investment in rural areas of Clackamas County. Additionally this funding source allows for the development of work force affordable housing on the site and this location would be ideal for housing development. The need is great for work force housing.

### **Alignment with City Goals and Local Need**

The utilization of Project Turnkey funding will allow the Housing Authority to work with the City of Estacada to ensure future work force Housing projects align with their city plans and community needs while providing safe space and services for this wildfire impacted community.

### **Ongoing Community Engagement**

Housing Authority staff intend to attend the Estacada Connect meeting scheduled for February 4<sup>th</sup> to introduce this topic to attendees. We will seek City leadership feedback and conduct ongoing outreach and community engagement support of this effort. In the event that we are successful in acquiring the property, planning for future development will involve deep and ongoing community engagement.

### **RED FOX PROPERTY:**

The Red Fox Property at 600 SW Beech Road, Estacada OR sits on approximately 2.84 acres. The property includes the following buildings and land:

- Red Fox Motel: this includes a 24 unit traditional motel with one manager apartment; a separate building next to the hotel includes 6 one-bedroom extended stay apartments and 2 two-bedroom extended stay apartments.
- Potential development site of 1.6 acres
- 50 storage units in a self-storage building

Public transportation is available with TriMet running every 30 minutes from Estacada to Clackamas Town Center. The bus trip takes approximately 35 minutes total. Adjacent to the Red Fox Property includes to the north an urgent care facility and grocery store, to the east another grocery store and restaurant, to the west a restaurant and two single family homes, and to the south the Clackamas River.

### **ZONING:**

Current zoning (See Figure 3) is Downtown (D) which encourages mix of office, service, retail, light manufacturing, and governmental uses. The D zone also allows residential uses in upper stories of commercial buildings, and high density residential and mixed-use (residential and

commercial) development oriented to the Clackamas River. Uses that are permitted outright include Multi-family dwellings not less than 16 dwelling units per acre, hotel or motel, and short term rentals. Adjacent to the Red Fox Property includes to the north an urgent care facility and grocery store, to the east another grocery store and restaurant, to the west a restaurant and two single family homes, and to the south the Clackamas River.

**PURCHASE PRICE AND DUE DILIGENCE:**

Asking purchase price is \$3,100,000. Once the property is under contract with a signed Purchase and Sale Agreement in place, the team will begin due diligence to include:

- Appraisal
- Environmental Site Assessment
- Physical Inspection
- ADA Compliance
- Pest Inspection
- Mold and Hazardous Materials Inspection
- ALTA Survey
- Zoning Compliance Determination
- Operating Expense Analysis

**USE:**

A Project Turnkey-funded acquisition of the Red Fox Property would help the County further its objective of meeting the housing and homeless services needs outside the urban growth boundary (UGB). Currently, the bulk of the County's available resources for housing development and homeless services funding – the Affordable Housing Bond and the Supportive Housing Services fund - are limited to within the UGB. The community engagement conducted for the Supportive Housing Services measure revealed an overwhelming priority within the community for expansion of shelter capacity in the County, and the resources of that measure will allow the County to expand shelter within the UGB. Acquisition of the Red Fox would ensure equitable distribution of shelter resources and future work force housing into the rural areas of the County as well.

A Purchase and Sale Agreement is attached and has been reviewed and approved by County Counsel.

**Attached for your review**

- Purchase and Sale Agreement
- Zoning, map and unit pictures

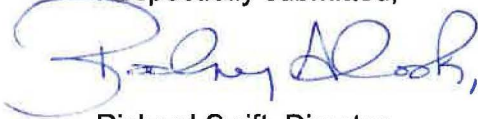
**RECOMMENDATION:**

Staff recommends the Board approve the Purchase and Sale Agreement between the Housing Authority of Clackamas County and Larch Investors Inc. (owner) for the Red Fox Motel, Little Fox Storage, and land located at 600 SW Beech Road in the City of Estacada, County of Clackamas, Oregon

Staff also recommends the Board authorize Jill Smith, HACC Executive Director, or Richard Swift, Director of H3S, to sign the PSA and all pertinent real estate documentation on behalf of the Housing Authority of Clackamas County Board.



Respectfully submitted,

 *Richard Swift, HHS Deputy / For*

Richard Swift, Director  
Health, Housing and Human Services

COMMERCIAL ASSOCIATION OF BROKERS OREGON/SW WASHINGTON  
PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION DEPOSIT  
(Oregon Commercial Form)

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AGENCY ACKNOWLEDGMENT

Buyer shall execute this Acknowledgment concurrent with the execution of the Agreement below and prior to delivery of that Agreement to Seller. Seller shall execute this Acknowledgment upon receipt of the Agreement by Seller, even if Seller intends to reject the Agreement or make a counter-offer. In no event shall Seller's execution of this Acknowledgment constitute acceptance of the Agreement or any terms contained therein.

Pursuant to the requirements of Oregon Administrative Rules (OAR 863-015-0215), both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and by execution below acknowledge and consent to the agency relationships in the following real estate purchase and sale transaction as follows:

(a) Seller Agent: **Skip Rotticci of Colliers International** firm (the "Selling Firm") is the agent of  
(check one):  
 Buyer exclusively;  Seller exclusively;  both Seller and Buyer ("Disclosed Limited Agency").

(b) Buyer Agent: **Skip Rotticci of Colliers International** firm (the "Buying Firm") is the agent of  
(check one):  
 Buyer exclusively;  Seller exclusively;  both Seller and Buyer ("Disclosed Limited Agency").

If the name of the same real estate firm appears in both Paragraphs (a) and (b) above, Buyer and Seller acknowledge that a principal broker of that real estate firm shall become the Disclosed Limited Agent for both Buyer and Seller, as more fully set forth in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and the named real estate agent(s).

ACKNOWLEDGED

Buyer: **Housing Authority of Clackamas County**

(sign) \_\_\_\_\_ Date: \_\_\_\_\_

Seller: **Larch Investors, Inc.**

(sign) \_\_\_\_\_ Date: \_\_\_\_\_

OPTION OF PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION MONEY

This PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION DEPOSIT (this "Agreement") dated January 14, 2021, for reference purposes only, shall be effective on the date when this Agreement has been executed and delivered by Seller and Buyer (the "Execution Date"):

BETWEEN: Larch Investors, Inc. an Oregon Domestic Business Corporation ("Seller")
Address: P.O. Box 398 Estacada, Oregon 97023
Home Phone:
Office Phone:
Fax No.:
E-Mail: cadakid@aol.com

AND: Housing Authority of Clackamas County ("Buyer")
Address: 13930 Gain St. Oregon City, OR 97045
Home Phone:
Office Phone: (503) 655-8676
Fax No.:
E-Mail: vbrown@co.clackamas.or.us

1. Purchase and Sale.

1.1 Generally. In accordance with this Agreement, Buyer agrees to buy and acquire from Seller, and Seller agrees to sell to Buyer the following, all of which are collectively referred to in this Agreement as the "Property:" (a) the real property and all improvements thereon generally described as the Red Fox Motel, Little Fox Storage, and land located at 600 SW Beech Road in the City of Estacada, County of Clackamas, Oregon legally described on Exhibit A, attached hereto (the "Real Estate" or the "Property") (if no legal description is attached, the legal description shall be based on the legal description provided in the Preliminary Report (described in Section 5), subject to the review and approval of both parties hereto), including all of Seller's right, title and interest in and to all fixtures, appurtenances, and easements thereon or related thereto; and (b) any and all personal property located on and used in connection with the operation of the Real Estate and owned by Seller, with the exception of personal property in the manager's unit, (the "Personal Property") that Buyer has agreed, in writing, to accept upon closing. If there are any Leases, see Section 21.1, below. The occupancies of the Property pursuant to any Leases are referred to as the "Tenancies" and the occupants thereunder are referred to as "Tenants." If there is any Personal Property, see Section 21.2, below.

Commented [A1]: Do we know if there are active storage leases here? Will HACC have to honor these leases going forward and effectively act as a storage unit manager?

1.2 Purchase Price. The purchase price for the Property shall be Three Million One Hundred Thousand dollars (\$3,100,000.00) (the "Purchase Price"), or appraised value, whichever is less and subject to the terms and conditions of Section 2.1 below. The Purchase Price shall be adjusted, as applicable, by the net amount of credits and debits to Seller's account at Closing (defined below) made by Escrow Holder pursuant to the terms of this Agreement. The Purchase Price shall be payable as follows:

Commented [A2]: This is the language from the counter offer document. Not sure why we need that at all. Can't we just include this into the PSA?

1.2.1 Option Deposit.

(a) Within three (3) days of the Execution Date, Buyer shall deliver into Escrow (as defined herein), for the account of Buyer, \$25,000.00 as an Option deposit (the "Option Deposit") in the form of:
[ ] Promissory note (the "Note"); [X] Check; or [ ] Cash or other immediately available funds.

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46 If the Option Deposit is being held by the  Selling Firm  Buying Firm, then the firm holding such Option Deposit  
47 shall deposit the Option Deposit in the  Escrow (as hereinafter defined)  Selling Firm's Client Trust Account  
48  Buying Firm's Clients' Trust Account, no later than 5:00 PM Pacific Time three (3) business days after such  
49 firm's receipt, but in no event later than the date set forth in the first sentence of this Section 1.2.1(a).

50  
51 (b) The purchase and sale of the Property shall be accomplished through an escrow (the  
52 "Escrow") that Seller has established or will establish with **First American Title Company Portland, Oregon** (the  
53 "Escrow Holder") within **three (3)** days after the Execution Date. Except as otherwise provided in this Agreement: (i)  
54 any interest earned on the Option Deposit shall be considered to be part of the Option Deposit; (ii) the Option  
55 Deposit shall be non-refundable upon satisfaction or waiver of all Conditions as defined in Section 2.1; and (iii) the  
56 Option Deposit shall be applied to the Purchase Price at Closing.

57  
58 1.2.2 Balance of Purchase Price: Buyer shall pay the balance of the Purchase Price at Closing  
59 by  cash or other immediately available funds; or  Other: **Cash and the proceeds of a grant from the**  
60 **Oregon Community Foundation.**

Commented [A3]: Confirm this is correct.

61  
62 1.3 ~~Section 1031 Like Kind Exchange. Each party acknowledges that either party (as applicable, the~~  
63 ~~"Exchanging Party") may elect to engage in and affect a like kind exchange under Section 1031 of the Internal~~  
64 ~~Revenue Code of 1986, as amended, involving the Property (or any legal lot thereof) (a "1031 Exchange"). The non-~~  
65 ~~exchanging party with respect to a 1031 Exchange is referred to herein as the "Cooperating Party." Buyer and Seller~~  
66 ~~each hereby agrees to reasonably cooperate with the other in completing each such 1031 Exchange; provided,~~  
67 ~~however, that such cooperation shall be at the Exchanging Party's sole expense and shall not delay the Closing for~~  
68 ~~the Property. Accordingly, the Exchanging Party may assign the Exchanging Party's rights with respect to the~~  
69 ~~Property (or any legal lot thereof) to a person or entity for the purpose of consummating a 1031 Exchange~~  
70 ~~("Intermediary"), provided that such assignment does not delay the Closing for the Property (or applicable legal lot~~  
71 ~~thereof), or otherwise reduce or diminish the Exchanging Party's liabilities or obligations hereunder. Such~~  
72 ~~assignment by the Exchanging Party shall not release the Exchanging Party from the obligations of the Exchanging~~  
73 ~~Party under this Agreement. The Cooperating Party shall not suffer any costs, expenses or liabilities for cooperating~~  
74 ~~with the Exchanging Party and shall not be required to take title to the exchange property. The Exchanging Party~~  
75 ~~agrees to indemnify, defend and hold the Cooperating Party harmless from any liability, damages and costs arising~~  
76 ~~out of the 1031 Exchange.~~ Reserved.

Commented [A4]: I see this was deleted in the other document. I'm not sure what the purpose of two agreements are.

## 77 78 2. Conditions to Purchase.

79  
80 2.1 Buyer's obligation to purchase the Property is conditioned on the following:

81  
82  This Agreement is contingent upon Buyer obtaining, at Buyer's sole expense, a written  
83 appraisal from a licensed appraiser within 45 days of the Execution Date stating that the appraised  
84 value of the Property is at least the Purchase Price. If the appraisal states that the appraised value  
85 of the Property is less than the above value, Buyer shall deliver a copy of such appraisal to Seller  
86 within 10 days after the above date and deliver written notice to Seller, either: a) terminating this  
87 Agreement in which event the Option Deposit shall be refunded to Buyer, thereby releasing Buyer  
88 and Seller from all further obligations under this Agreement; or b) negotiate a new purchase price  
89 on terms acceptable to both parties. If Buyer fails to timely obtain an appraisal, or having timely  
90 obtained such appraisal fails to timely deliver notice, this Agreement shall terminate, and the  
91 Option Deposit shall be refunded to Buyer;

92  Within **forty five (45)** days of the Execution Date, Buyer's approval of the  
93 results of (collectively, the "Feasibility Contingency"): (a) the Property inspection  
94 described in Section 3 below; (b) the document review described in Section 4 below; (c)  
95 Environmental Assessment and review; and (d) the other conditions described below:

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96  Within fifteen (15) days of the expiration of the Feasibility Contingency period, Buyer's  
97 receipt of confirmation of satisfactory financing (the "Financing Condition") and approval of  
98 Release of Funds by the State of Oregon; and/or

99  Other **Notwithstanding any other provision of this Agreement, the closing  
100 of this transaction will be contingent on final written approval by the Board of  
101 Commissioners (the "Board") for the Housing Authority of Clackamas County to  
102 proceed with closing of the sale, as determined by the Board in its sole  
103 administrative discretion. Buyer shall have no obligation to purchase the  
104 Property, and no transfer of title to the Buyer may occur, unless and until the  
105 Board, as the responsible entity, has provided Buyer and/or Seller with a written  
106 determination that purchase of the Property may proceed, or that the purchase  
107 may proceed subject to any other conditions in this Agreement or only if certain  
108 conditions to address issues in the environmental or other reviews and  
109 inspections shall be satisfied before or after the purchase of the Property. The  
110 closing of this transaction and purchase of the Property will also be contingent  
111 upon the following:**

- 112 1. **Buyer's acceptance of the Title Report and all Exceptions identified**  
113 **thereon, as set forth in Section 5, below.**
- 114 2. **Appropriation by the Board of sufficient funds, as determined by Buyer in**  
115 **its sole discretion, to permit Buyer to proceed with closing of the sale and**  
116 **purchase of the Property.**
- 117 3. **Receipt by Buyer of any and all funding necessary to proceed with closing**  
118 **of the sale and purchase of the Property, as determined by the Buyer in its**  
119 **sole administrative discretion, from any and all State or Federal funding**  
120 **sources.**
- 121 4. **Completion of all inspections, environmental reviews, or other**  
122 **assessments of the Property that Buyer determines, in its sole discretion,**  
123 **to be necessary. Buyer shall use its best efforts to conclude the**  
124 **inspections, environmental reviews, or other assessments of the Property**  
125 **expeditiously. Buyer's inspections, environmental reviews, or other**  
126 **assessments are subject to an approved request for release of federal or**  
127 **state funds.**
- 128 5. **Acceptance by Buyer, in its sole discretion, of the results of any**  
129 **inspections, environmental reviews, or other assessments performed on**  
130 **the Property.**
- 131 ~~6. **On or before Closing Buyer will use its best efforts to initiate and**~~  
132 ~~**implement a mechanism to accommodate an IRC Section 1033 Exchange**~~  
133 ~~**for the benefit of the Seller.**~~

**Commented [A5]:** Looks like this is coming out in the other document. Again, not entirely sure why we'd have two documents instead of just red-lining this.

137 The Feasibility Contingency, Financing Condition or any other conditions noted shall be defined as "Conditions."

138  
139 2.2 If Buyer decides to proceed to Closing, Buyer will give written notice to Seller before the expiration  
140 of the Feasibility Contingency indicating that Buyer waives the Conditions set forth in Section 2.1 or that the  
141 Conditions set forth in Section 2.1 have been satisfied. If, for any reason Buyer fails to give written waiver of the  
142 Conditions set forth in Section 2.1, or state in writing that such Conditions have been satisfied, by notice to Seller  
143 before the expiration of the Feasibility Contingency, this Agreement shall be deemed automatically terminated, the  
144 Option Deposit shall be promptly returned to Buyer, and thereafter, except as specifically provided to the contrary  
145 herein, neither party shall have any further right or remedy hereunder. In addition, if Buyer is unable to receive a

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146 release of funds from State or Federal funding sources necessary to purchase the Property, or if the Board does not  
147 approve closing of the sale and purchase of the Property, this Agreement shall be deemed terminated and the  
148 Option Deposit(s) shall be immediately returned to Buyer, and thereafter, except as specifically provided to the  
149 contrary herein, neither party shall have any further right or remedy hereunder.  
150

151 3. Property Inspection. Seller shall permit Buyer and its agents, at Buyer's sole expense and risk, to enter  
152 the Property at reasonable times after reasonable prior notice to Seller and after prior notice by Seller to the Tenants  
153 as required by the applicable Leases, if any, to conduct any and all inspections, tests, and surveys concerning the  
154 structural condition of the improvements, all mechanical, electrical and plumbing systems, hazardous materials, pest  
155 infestation, soils conditions, wetlands, Americans with Disabilities Act compliance, zoning, and all other matters  
156 affecting the suitability of the Property for Buyer's intended use and/or otherwise reasonably related to the purchase  
157 of the Property including the economic feasibility of such purchase. ~~Subject to the limits of applicable law, Buyer~~  
158 ~~shall indemnify, hold harmless, and defend Seller from all liens, costs, and expenses, including reasonable~~  
159 ~~attorneys' fees and experts' fees, arising from or relating to Buyer's negligent acts or omissions during the~~  
160 ~~inspections, tests, and surveys authorized under this Section 3. This agreement to indemnify, hold harmless, and~~  
161 ~~defend Seller shall survive closing or any termination of the Agreement.~~  
162

Commented [A6]: This was negotiated with the last owner. I wouldn't make it a standard term unless the seller makes a similar demand.

163 4. Seller's Documents. Within ten (10) business days after the Execution Date, Seller shall deliver to  
164 Buyer or Buyer's designee, legible and complete copies of the following documents, including without limitation, a list  
165 of the Personal Property, and other items relating to the ownership, operation, and maintenance of the Property to  
166 the extent now in existence and to the extent such items are or come within Seller's possession or control: **Including**  
167 **but not limited to business records as the pertain to the facility, plans, permits, and approvals, reports,**  
168 **studies, assessments related to the Property, environmental assessments, soils assessments and**  
169 **Geotechnical reports, correspondence from or to any governmental agency or regulatory agency regarding**  
170 **the Property within the last 5 years, any recorded or unrecorded easement related to the Property.**  
171

172 5. Title Insurance. Within ten (10) business days after the Execution Date, Seller shall cause to be  
173 delivered to Buyer a preliminary title report from the title company (the "Title Company") selected by Seller (the  
174 "Preliminary Report"), showing the status of Seller's title to the Property, together with complete and legible copies of  
175 all documents shown therein as exceptions to title ("Exceptions"). Buyer shall have thirty (30) days after receipt of a  
176 copy of the Preliminary Report and Exceptions within which to give notice in writing to Seller of any objection to such  
177 title or to any liens or encumbrances affecting the Property. Within five (5) business days after receipt of such notice  
178 from Buyer, Seller shall give Buyer written notice of whether it is willing and able to remove the objected-to  
179 Exceptions. Without the need for objection by Buyer, Seller shall, with respect to liens and encumbrances that can  
180 be satisfied and released by the payment of money, eliminate such exceptions to title on or before Closing. Within  
181 five (5) business days after receipt of such notice from Seller (the "Title Contingency Date"), Buyer shall elect  
182 whether to: (i) purchase the Property subject to those objected-to Exceptions which Seller is not willing or able to  
183 remove; or (ii) terminate this Agreement. On or before the Closing Date (defined below), Seller shall remove all  
184 Exceptions to which Buyer objects and which Seller agrees Seller is willing and able to remove. All remaining  
185 Exceptions set forth in the Preliminary Report and those Exceptions caused by or agreed to by Buyer shall be  
186 deemed "Permitted Exceptions."  
187

188 6. Default: Remedies. Notwithstanding anything to the contrary contained in this Agreement, in the event  
189 Buyer fails to deposit the Option Deposit(s) in Escrow strictly as and when contemplated under Section 1.2.1 or  
190 Section 1.2 above, Seller shall have the right at any time thereafter, but prior to Buyer's deposit of the Option  
191 Deposit to Escrow, to terminate this Agreement and all further rights and obligations hereunder by giving written  
192 notice thereof to Buyer. If the conditions, if any, to Buyer's obligation to consummate this transaction are satisfied or  
193 waived by Buyer and Buyer fails, through no fault of Seller, to close on the purchase of the Property, Seller's sole  
194 remedy shall be to retain the Option Deposit(s) paid by Buyer. In the event Seller fails, through no fault of Buyer, to  
195 close the sale of the Property, Buyer shall be entitled to pursue any remedies available at law or in equity, including

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196 without limitation, the return of the Option Deposit(s) paid by Buyer or the remedy of specific performance. In no  
197 event shall either party be entitled to punitive or consequential damages, if any, resulting from the other party's  
198 failure to close the sale of the Property.

199  
200 7. Closing of Sale.

201  
202 7.1 Buyer and Seller agree the sale of the Property shall be consummated, in Escrow,  on or before  
203 or  thirty (30) days after the conditions set forth in Sections 2.1, 3, 4 and 5 have been satisfied or waived in  
204 writing by Buyer (the "Closing" or the "Closing Date"). The sale of the Property shall be deemed closed when the  
205 document(s) conveying title to the Property is/are delivered and recorded and the Purchase Price is disbursed to  
206 Seller.

207  
208 7.2 At Closing, Buyer and Seller shall deposit with the Escrow Holder all documents and funds  
209 required to close the transaction in accordance with the terms of this Agreement. At Closing, Seller shall  
210 deliver a certification in a form provided by the Escrow Holder confirming whether Seller is or is not a "foreign  
211 person" as such term is defined by applicable law and regulations.

212  
213 7.3 At Closing, Seller shall convey fee simple title to the Property to Buyer by  statutory warranty  
214 deed or  \_\_\_ (the "Deed"). At Closing, Seller shall cause the Title Company to deliver to Buyer a standard ALTA  
215 form owner's policy of title insurance (the "Title Policy") in the amount of the Purchase Price insuring fee simple title  
216 to the Property in Buyer subject only to the Permitted Exceptions and the standard preprinted exceptions contained  
217 in the Title Policy. Seller shall reasonably cooperate in the issuance to Buyer of an ALTA extended form policy of  
218 title insurance. Buyer shall pay any additional expense resulting from the ALTA extended coverage and any  
219 endorsements required by Buyer.

220  
221 8. Closing Costs; Prorations. Seller shall pay the premium for the Title Policy. If Buyer elects to obtain an  
222 ALTA extended form policy of title insurance and/or any endorsements, Buyer shall pay the difference in the  
223 premium relating to such election. Seller and Buyer shall each pay one-half (1/2) of the escrow fees charged by the  
224 Escrow Holder. Any excise tax and/or transfer tax shall be paid in accordance with the local custom determined by  
225 the Title Company and applicable law. Real property taxes for the tax year of the Closing, assessments (if a  
226 Permitted Exception), personal property taxes, rents and other charges arising from existing Tenancies paid for the  
227 month of Closing, interest on assumed obligations, and utilities shall be prorated as of the Closing Date. If  
228 applicable, prepaid rents, security deposits, and other unearned refundable deposits relating to Tenancies shall  
229 be assigned and delivered to Buyer at Closing.  Seller  Buyer  N/A shall be responsible for payment of all  
230 taxes, interest, and penalties, if any, upon removal of the Property from any special assessment or program.

231  
232 9. Possession. Seller shall deliver exclusive possession of the Property, subject to the Tenancies (if any)  
233 existing as of the Closing Date, to Buyer  on the Closing Date or  \_\_\_.

234  
235 10. Condition of Property. Seller represents and warrants it is the sole owner of the Property and has authority to  
236 convey fee simple title to the Property by statutory warranty deed. Seller represents that Seller has received no  
237 written notices of violation of any laws, codes, rules, or regulations applicable to the Property ("Laws"). Seller  
238 represents there are no suits, actions, arbitrations, judgments, legal, administrative or other proceedings, claims,  
239 liens, or inquiries pending or threatened against the Property, or any portion thereof, which could affect Seller's right  
240 or title to the Property, or any portion thereof, affect the value of the Property, or any portion thereof, or subject an  
241 owner of the Property, or any portion thereof, to liability. Seller represents no work on the Property has been done or  
242 will be done, or materials provided, giving rise to actual or impending mechanic's liens, private liens, or any other  
243 liens, against the Property or any portion thereof. Seller represents that it has not entered into, and will not enter into,  
244 any other contracts for the sale of the Property, nor do there exist nor will there be any rights of first refusal, options  
245 to purchase the Property, leases, mortgages, licenses, easements, prescriptive rights, permits, or other rights or

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246 agreement, written or oral, express or implied, which in any way affect or encumber the Property or any portion  
247 thereof. Seller represents that, to the best of Seller's knowledge without specific inquiry, Seller is not aware of any  
248 such violations or any concealed material defects in the Property. Unless caused by Buyer, Seller shall bear all risk  
249 of loss and damage to the Property until the Property is closed pursuant to Section 7 Closing, and Buyer shall bear  
250 such risk at and after ~~Closing~~the Property is closed pursuant to Section 7. Except for Seller's representations set  
251 forth in this Section 10 and the attached Exhibit E, Buyer shall acquire the Property "AS IS" with all faults and Buyer  
252 shall rely on the results of its own inspection and investigation in Buyer's acquisition of the Property. It shall be a  
253 condition of Buyer's Closing obligation that all of Seller's representations and warranties stated in this Agreement are  
254 materially true and correct on the Closing Date. Subject to any limitation period under applicable law, Seller's  
255 representations and warranties stated in this Agreement shall survive Closing of this Agreement.

**Commented [A7]:** This is just to bring this in line with paragraph 27, below. We could probably even juts delete this one sentence.

256  
257 If Seller discovers any information or facts that would materially change the foregoing warranties and  
258 representations or the transactions contemplated by this Agreement, Seller shall immediately give written notice to  
259 Buyer of those facts and information. If any of the foregoing warranties and representations cease to be true before  
260 the close of Escrow, Seller shall be obligated to use its best efforts to remedy the problem, at its sole expense,  
261 before the close of Escrow. If the problem is not remedied before close of Escrow, Buyer may elect to either: (a)  
262 terminate this Agreement in which case Buyer shall have no obligation to purchase the Property and all Escrow  
263 payments, including the Option Deposit, shall be refunded to Buyer, or (b) defer the Closing Date for a period not to  
264 exceed ninety (90) days or until such problem has been remedied, whichever occurs first. If the problem is not  
265 remedied within that timeframe, Buyer may elect to terminate this Agreement and receive a refund of all Escrow  
266 payments, including the Option Deposit. Buyer's election in this regard shall not constitute a waiver of Buyer's rights  
267 in regard to any loss or liability suffered as a result of a representation or warranty not being true, nor shall it  
268 constitute a waiver of any other remedies provided in this Agreement or by law or equity.

269  
270  
271 11. Operation of Property. Between the Execution Date and the Closing Date, Seller shall continue to  
272 operate, maintain and insure the Property consistent with Seller's current operating practices. After Buyer has  
273 satisfied or waived the conditions to Buyer's obligation to purchase the Property, and the Option Deposit is non-  
274 refundable, Seller may not, enter into: (a) any new leases or occupancy agreements for the Property; (b) any  
275 material amendments or modification agreements for any existing leases or occupancy agreements for the Property;  
276 or (c) any service contracts or other agreements affecting the Property that are not terminable at the Closing.

277  
278 12. Assignment. Assignment of this Agreement:  is PROHIBITED;  is PERMITTED, without consent  
279 of Seller;  is PERMITTED ONLY UPON Seller's written consent;  is PERMITTED ONLY IF the assignee is an  
280 entity owned and controlled by Buyer. Assignment is PROHIBITED, if no box is checked. If Seller's written  
281 consent is required for assignment, such consent may be withheld in Seller's reasonable discretion. In the event of a  
282 permitted assignment, Buyer shall remain liable for all Buyer's obligations under this Agreement.

283  
284  
285 13. Statutory Notice. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A  
286 FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE  
287 LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR  
288 SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS  
289 DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE  
290 PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER  
291 ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS  
292 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8,  
293 OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE  
294 TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING  
295

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296 DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED  
297 LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT  
298 OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE  
299 ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND  
300 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND  
301 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.  
302

303 14. Cautionary Notice About Liens. UNDER CERTAIN CIRCUMSTANCES, A PERSON WHO  
304 PERFORMS CONSTRUCTION-RELATED ACTIVITIES MAY CLAIM A LIEN UPON REAL PROPERTY AFTER A  
305 SALE TO THE PURCHASER FOR A TRANSACTION OR ACTIVITY THAT OCCURRED BEFORE THE SALE. A  
306 VALID CLAIM MAY BE ASSERTED AGAINST THE PROPERTY THAT YOU ARE PURCHASING EVEN IF THE  
307 CIRCUMSTANCES THAT GIVE RISE TO THAT CLAIM HAPPENED BEFORE YOUR PURCHASE OF THE  
308 PROPERTY. THIS INCLUDES, BUT IS NOT LIMITED TO, CIRCUMSTANCES WHERE THE OWNER OF THE  
309 PROPERTY CONTRACTED WITH A PERSON OR BUSINESS TO PROVIDE LABOR, MATERIAL, EQUIPMENT  
310 OR SERVICES TO THE PROPERTY AND HAS NOT PAID THE PERSONS OR BUSINESS IN FULL.  
311

312 15. Brokerage Agreement. For purposes of Section 15 of this Agreement, the Agency Acknowledgement  
313 on page 1 this Agreement is incorporated into this Agreement as if fully set forth herein. Seller agrees to pay a  
314 commission to Selling Firm in the amount of either:  **three and one half (3.5%)** of the Purchase Price or  \$  
315 Such commission shall be divided between Selling Firm and Buying Firm such that Selling Firm receives one  
316 **hundred percent (100%)** and Buying Firm receives zero percent (0%). Seller shall cause the Escrow Holder to  
317 deliver to Selling Firm and Buying Firm the real estate commission on the Closing Date or upon Seller's breach of  
318 this Agreement, whichever occurs first.  
319

320 16. Notices. Unless otherwise specified, any notice required or permitted in, or related to this Agreement  
321 must be in writing and signed by the party to be bound. Any notice will be deemed delivered: (a) when personally  
322 delivered; (b) when delivered by facsimile or electronic mail transmission (in either case, with confirmation of  
323 delivery); (c) on the day following delivery of the notice by reputable overnight courier; or (d) on the day following  
324 delivery of the notice by mailing by certified or registered U.S. mail, postage prepaid, return receipt requested; and in  
325 any case shall be sent by the applicable party to the address of the other party shown at the beginning of this  
326 Agreement, unless that day is a Saturday, Sunday, or federal or Oregon State legal holiday, in which event such  
327 notice will be deemed delivered on the next following business day.  
328

329 17. Miscellaneous. Time is of the essence of this Agreement. If the deadline under this Agreement for  
330 delivery of a notice or performance of any obligation is a Saturday, Sunday, or federal or Oregon State legal holiday,  
331 such deadline will be deemed extended to the next following business day. The facsimile and/or electronic mail  
332 transmission of any signed document including this Agreement in accordance with Section 16 shall be the same as  
333 delivery of an original. At the request of either party, the party delivering a document by facsimile and/or electronic  
334 mail will confirm such transmission by signing and delivering to the other party a duplicate original document. This  
335 Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall  
336 constitute one and the same Agreement. This Agreement contains the entire agreement and understanding of the  
337 parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous  
338 agreements between them. Without limiting the provisions of Section 12 of this Agreement, this Agreement shall be  
339 binding upon and shall inure to the benefit of Buyer and Seller and their respective successors and assigns. Solely  
340 with respect to Section 15, Selling Firm and Buying Firm are third party beneficiaries of this Agreement. The person  
341 signing this Agreement on behalf of Buyer and the person signing this Agreement on behalf of Seller each  
342 represents, covenants and warrants that such person has full right and authority to enter into this Agreement and to  
343 bind the party for whom such person signs this Agreement to its terms and provisions. Neither this Agreement nor a  
344 memorandum hereof shall be recorded unless the parties otherwise agree in writing.  
345

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346 18. Governing Law. This Agreement is made and executed under, and in all respects shall be governed and  
347 construed by, the laws of the State of Oregon. Any claim, action, or suit that arises out of or relates to the  
348 performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for  
349 Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be  
350 brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District  
351 Court for the District of Oregon. In no event shall this section be construed as a waiver by Buyer of any form of  
352 defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh  
353 Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.  
354 All parties, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced  
355 in this section.

356 19. Lease(s) and Personal Property.

357 19.1 Leases. Intentionally Omitted.

Commented [A8]: Are there storage leases?

358  
359  
360 19.2 Personal Property. If applicable, and upon written consent by Buyer, Seller shall convey  
361 all Personal Property to Buyer by executing and delivering to Buyer at Closing through Escrow (as defined below), a  
362 Bill of Sale substantially in the form of Exhibit C attached hereto (the "Bill of Sale"). A list of such Personal Property  
363 shall be attached to the Bill of Sale.  
364

365 20. Residential Lead-Based Paint Disclosure. IF THE PROPERTY CONSISTS OF RESIDENTIAL  
366 HOUSING BUILT PRIOR TO 1978, BUYER AND SELLER MUST COMPLETE THE LEAD-BASED PAINT  
367 DISCLOSURE ADDENDUM ATTACHED HERETO AS EXHIBIT D.  
368

369 21. Addenda; Exhibits. The following named addenda and exhibits are attached to this Agreement and  
370 incorporated within this Agreement:

- 371  
372  Exhibit A – Legal Description of Property [REQUIRED]  
373  Exhibit B – Assignment of Lessor's Interest under Lease (if applicable)  
374  Exhibit C – Bill of Sale (if applicable)  
375  Exhibit D – Lead Paint Disclosure Addendum (if applicable)  
376  Exhibit E – AS IS Exceptions (if applicable)  
377

378 22. Time for Acceptance. If Seller does not return to Buyer a signed and dated version of this Agreement  
379 on or before 5:00 PM Pacific Time on January 20, 2021, then the Option Deposit shall be promptly refunded to  
380 Buyer and thereafter, neither party shall have any further right or obligation hereunder.  
381  
382

Commented [A9]: Update.

383 23. OFAC Certification. The Federal Government, Executive Order 13224, requires that business persons  
384 of the United States not do business with any individual or entity on a list of "Specially Designated nationals and  
385 Blocked Persons" - that is, individuals and entities identified as terrorists or other types of criminals. Buyer  
386 hereinafter certifies that:

387 23.1 It is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation  
388 named by any Executive Order or the United States Treasury Department as a terrorist, specially designated  
389 national and/or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is  
390 enforced or administered by the Office of Foreign Assets Control; and  
391

392 23.2 It has not executed this Agreement, directly or indirectly on behalf of, or instigating or  
393 facilitating this Agreement, directly or indirectly on behalf of, any such person, group, entity, or nation.  
394  
395

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396 Subject to the limits of applicable law, Buyer hereby agrees to defend, indemnify, and hold harmless Seller from and  
397 against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs)  
398 arising from or related to any breach of the foregoing certification. This certification by Buyer and agreement to  
399 indemnify, hold harmless, and defend Seller shall survive Closing or any termination of this Agreement.  
400

401  
402 24. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article  
403 XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any  
404 provisions herein which would conflict with law are deemed inoperative to that extent  
405

406 25. Risk of Loss, Condemnation. Seller shall bear the risk of all loss or damage to the Property from all causes,  
407 until the Property is ~~Closed~~~~closed~~ pursuant to Section 7. If, before the Property is ~~Closed~~~~closed~~ pursuant to  
408 Section 7, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of  
409 the Property is taken by condemnation, or if any such condemnation is threatened, Seller shall give Buyer written  
410 notice of such event. Buyer may terminate this Agreement by giving written notice to Seller within fifteen (15) days  
411 following receipt by Buyer of written notice from Seller of such casualty or condemnation and the Option Deposit will  
412 be returned to Buyer.  
413

414 CONSULT YOUR ATTORNEY. THIS DOCUMENT HAS BEEN PREPARED FOR SUBMISSION TO YOUR  
415 ATTORNEY FOR REVIEW AND APPROVAL PRIOR TO SIGNING. NO REPRESENTATION OR  
416 RECOMMENDATION IS MADE BY THE COMMERCIAL ASSOCIATION OF BROKERS OREGON/SW  
417 WASHINGTON OR BY THE REAL ESTATE AGENTS INVOLVED WITH THIS DOCUMENT AS TO THE LEGAL  
418 SUFFICIENCY OR TAX CONSEQUENCES OF THIS DOCUMENT.  
419

420 THIS FORM SHOULD NOT BE MODIFIED WITHOUT SHOWING SUCH MODIFICATIONS BY REDLINING,  
421 INSERTION MARKS, OR ADDENDA.  
422

423 Buyer **HOUSING AUTHORITY OF CLACKAMAS COUNTY**

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

425 Name: **Jill Smith**

426 Title: **Director**

427  
428 Date: \_\_\_\_\_

429  
430  
431 Seller Acceptance. By execution of this Agreement, Seller agrees to sell the Property on the terms and conditions in  
432 this Agreement.  
433

434 Seller: **LARCH INVESTORS, Inc.**

435  
436  
437 By: \_\_\_\_\_

438 Name: **Samuel D. Dunlop**

439 Its: **President**

440  
441 Date: \_\_\_\_\_

442  
443  
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© 1997 Commercial Association of Brokers OREGON/SW WASHINGTON (Rev. 01/15)  
PURCHASE AND SALE AGREEMENT AND RECEIPT FOR OPTION DEPOSIT (OREGON)  
ALL RIGHTS RESERVED

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CRITICAL DATE LIST:

The last party to execute this Agreement shall complete the information below (the "Critical Date List"), initial where indicated, and return a copy of the same to the other party for such party's review. This Critical Date List is for reference purposes only and, in the event of a conflict between this Critical Date List and the Agreement, the terms of the Agreement shall prevail.

	DATE:
• Execution Date (Introductory paragraph):	
• Option Deposit due date (Section 1.2.1(a)):	<u>Within 3 days following execution of this Agreement</u>
• Seller shall open Escrow with the Escrow Holder (Section 1.2.1(a)):	Within 3 days following execution of this Agreement
• Seller shall deliver Seller's documents to Buyer (Section 4):	Within 10 days after the Execution Date
• Seller shall deliver Preliminary Report to Buyer (Section 5):	Within 10 days after the Execution Date
• Buyer's title objection notice due to Seller (Section 5):	Within 30 days after receipt of the Preliminary Report
• Seller's title response due to Buyer (Section 5):	Within 5 days after receipt of Buyer's title objection notice
• Title Contingency Date (Section 5):	Within 5 days after receipt of Seller's title response
• Expiration date for satisfaction of Feasibility Contingency (Section 2.1):	Within 45 days of the Execution Date
• Expiration date for satisfaction of Financing Condition (Section 2.1):	Within 15 days of the expiration of Feasibility Contingency Period
• By this date, Buyer must deliver the notice to proceed contemplated in Section 2.2.	Within 60 days of the Execution Date
• Closing Date (Section 7.1):	<u>Within 30 days following expiration of the Financing Conditions Period</u>

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Initials of Buyer: \_\_\_\_\_

Initials of Seller: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY

TO BE PROVIDED BY FIRST AMERICAN TITLE COMPANY

1  
2  
3  
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5

To include Assessor's Parcel Numbers:

34E29AA08701, 34E29AA09200, 34E29AA09300, 34E29AA08600, 34E29AA0900,  
34E29AA08900, 34E29AA09100, 34E29AA08800, 34E29AA08700, and 34E29AA07500.

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EXHIBIT C  
BILL OF SALE

Larch Investors, Inc., an Oregon Domestic Business Corporation ("Seller"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby bargain, transfer, convey and deliver to Housing Authority of Clackamas County, an Oregon Public Agency ("Buyer"), its successors and/or assigns:

All of the personal property owned by Seller (collectively, "Personal Property") located in or on the real property located at 600 SW Beech Road in the City of Estacada, County of Clackamas, State of Oregon, which Personal Property is more particularly described on Schedule 1 attached hereto and incorporated herein by reference.

Commented [A10]: HACC needs to know what this is and whether it wants this at all.

Seller hereby covenants with Buyer that said Personal Property is free and clear of and from all encumbrances, security interests, liens, mortgages and claims whatsoever and that Seller is the owner of and has the right to sell same. Seller, on behalf of itself and its successors, does hereby warrant and agree to defend the title in and to said Personal Property unto Buyer, its successors or assigns against the lawful claims and demands of all persons claiming by or through Seller.

IT IS UNDERSTOOD AND AGREED THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY HEREIN SOLD AND THAT THIS SALE IS MADE "AS IS, WHERE IS" AND SELLER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OTHER THAN THE WARRANTY OF TITLE SET FORTH ABOVE, AS TO THE PERSONAL PROPERTY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer and Seller agree that this Bill of Sale shall be effective upon the delivery thereof by Seller to Buyer.

IN WITNESS WHEREOF, the parties have caused this Bill of Sale to be executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SELLER: LARCH INVESTORS, Inc.

\_\_\_\_\_

BUYER: HOUSING AUTHORITY OF CLACKAMAS COUNTY

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EXHIBIT D  
LEAD-BASED PAINT DISCLOSURE ADDENDUM  
(TO BE COMPLETED IF THE PROPERTY CONSISTS OF RESIDENTIAL HOUSING BUILT PRIOR TO 1978)

Seller and Buyer are parties to that certain Commercial Association of Brokers Oregon / SW Washington Purchase and Sale Agreement and Receipt for Option Deposit (Oregon Commercial Form) dated \_\_\_\_, 20\_\_ (the "Purchase Agreement") for the sale of the Property described therein. Capitalized terms used in this addendum without definition shall have the meanings given them in the Purchase Agreement. Except as expressly modified by this addendum and any other addendum to the Purchase Agreement executed by Buyer and Seller, the Purchase Agreement is unmodified. This addendum and the Purchase Agreement may not be modified except in a writing signed by both Seller and Buyer.

LEAD WARNING STATEMENT

EVERY PURCHASER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY ON WHICH A RESIDENTIAL DWELLING WAS BUILT PRIOR TO 1978 IS NOTIFIED THAT SUCH PROPERTY MAY PRESENT EXPOSURE TO LEAD FROM LEAD-BASED PAINT THAT MAY PLACE YOUNG CHILDREN AT RISK OF DEVELOPING LEAD POISONING. LEAD POISONING IN YOUNG CHILDREN MAY PRODUCE PERMANENT NEUROLOGICAL DAMAGE, INCLUDING LEARNING DISABILITIES, REDUCED INTELLIGENCE QUOTIENT, BEHAVIORAL PROBLEMS AND IMPAIRED MEMORY. LEAD POISONING ALSO POSES A PARTICULAR RISK TO PREGNANT WOMEN. THE SELLER OF ANY INTEREST IN RESIDENTIAL REAL PROPERTY IS REQUIRED TO PROVIDE THE BUYER WITH ANY INFORMATION ON LEAD-BASED PAINT HAZARDS FROM RISK ASSESSMENTS OR INSPECTIONS IN THE SELLER'S POSSESSION AND NOTIFY THE BUYER OF ANY KNOWN LEAD-BASED PAINT HAZARDS. A RISK ASSESSMENT OR INSPECTION FOR POSSIBLE LEAD-BASED PAINT HAZARDS IS RECOMMENDED PRIOR TO PURCHASE.

AGENT'S ACKNOWLEDGMENT

Seller Agent has informed Seller of Seller's obligations under 42 U.S.C. 4852(d) and Agent is aware of his/her responsibility to ensure compliance.

SELLER'S DISCLOSURE

.1 **Presence of lead-based paint and/or lead-based paint hazards (check one below):**

Seller has knowledge of lead-based paint and/or lead-based paint hazards in the housing (explain).  
\_\_\_\_\_  
\_\_\_\_\_

Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

.2 **Records and reports available to Seller (check one below):**

Seller has provided Buyer with all available records and reports relating to lead-based paint and/or lead-based paint hazards in the housing (list documents below):  
\_\_\_\_\_  
\_\_\_\_\_

Seller has no reports or records relating to lead-based paint and/or lead-based paint hazards in the housing.

48 The following parties have reviewed the information above and certify, to the best of their knowledge, that the  
49 information they provided is true and accurate. A photocopy of this completed LEAD-BASED PAINT DISCLOSURE  
50 ADDENDUM, together with a copy of any documents listed in Section 2 of Seller's Disclosure above, may be treated  
51 as an original.

Seller Agent \_\_\_\_\_ Date \_\_\_\_\_ ← Seller \_\_\_\_\_ Date \_\_\_\_\_ ←

Selling Firm \_\_\_\_\_ Seller \_\_\_\_\_ Date \_\_\_\_\_ ←

52  
53 BEFORE BUYER IS OBLIGATED TO PURCHASE THIS PROPERTY UNDER ANY PURCHASE AND SALE  
54 AGREEMENT, BUYER'S AND SELLER'S SIGNATURES ARE REQUIRED ON THE FORM BELOW.

55  
56 BUYER'S ACKNOWLEDGMENT

57 .1 Buyer has received copies of all information listed above in Section 2 of Seller's Disclosure of  
58 this form.

59  
60 .2 Buyer has received the pamphlet "Protect Your Family from Lead in Your Home."

61  
62 .3 Buyer has (check one below):

63  Elected a ten (10) day opportunity (or mutually agreed upon period) to conduct a  risk assessment or   
64 inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards, providing Buyer the  
65 right to rescind the Purchase Agreement by written notice to Seller no later than the end of such agreed upon 10 day  
66 period if Buyer is not satisfied in Buyer's sole discretion with the results of such risk assessments or inspection, as  
67 applicable. Buyer and Seller hereby agree the ten (10) day period described in the preceding sentence shall begin  
68 and end \_\_\_\_\_. Buyer's failure to provide written notice of Buyer's election to rescind the Purchase Agreement to  
69 Seller on or before \_\_\_\_\_, 20\_\_ shall be deemed a waiver of Buyer's right to rescind as provided in this addendum.  
70 If Buyer timely elects to rescind the Purchase Agreement as provided herein, the Option Deposit shall be returned to  
71 Buyer, together with any interest thereon.

72  Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or  
73 lead-based paint hazards.

Buyer \_\_\_\_\_ Date \_\_\_\_\_ ←

Buyer \_\_\_\_\_ Date \_\_\_\_\_ ←

74  
75 CERTIFICATION OF ACCURACY

76  
77 This section must be signed by Buyer before Seller signs lines below. The following parties have reviewed  
78 the information and certify, to the best of their knowledge, that the information they provided herein is true and  
79 accurate.

Buyer \_\_\_\_\_ Date \_\_\_\_\_ ← Seller \_\_\_\_\_ Date \_\_\_\_\_ ←

Buyer \_\_\_\_\_ Date \_\_\_\_\_ ← Seller \_\_\_\_\_ Date \_\_\_\_\_ ←

Buyer Agent \_\_\_\_\_ Date \_\_\_\_\_ ← Seller Agent \_\_\_\_\_ Date \_\_\_\_\_ ←

Buying Firm \_\_\_\_\_ Seller Firm \_\_\_\_\_

80  
LINES WITH THIS SYMBOL ← REQUIRE A SIGNATURE



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EXHIBIT E  
AS IS EXCEPTIONS

None

**FIGURE 1 – Red Fox Motel, Little Fox Storage, Adjacent Land (Property In Blue)**

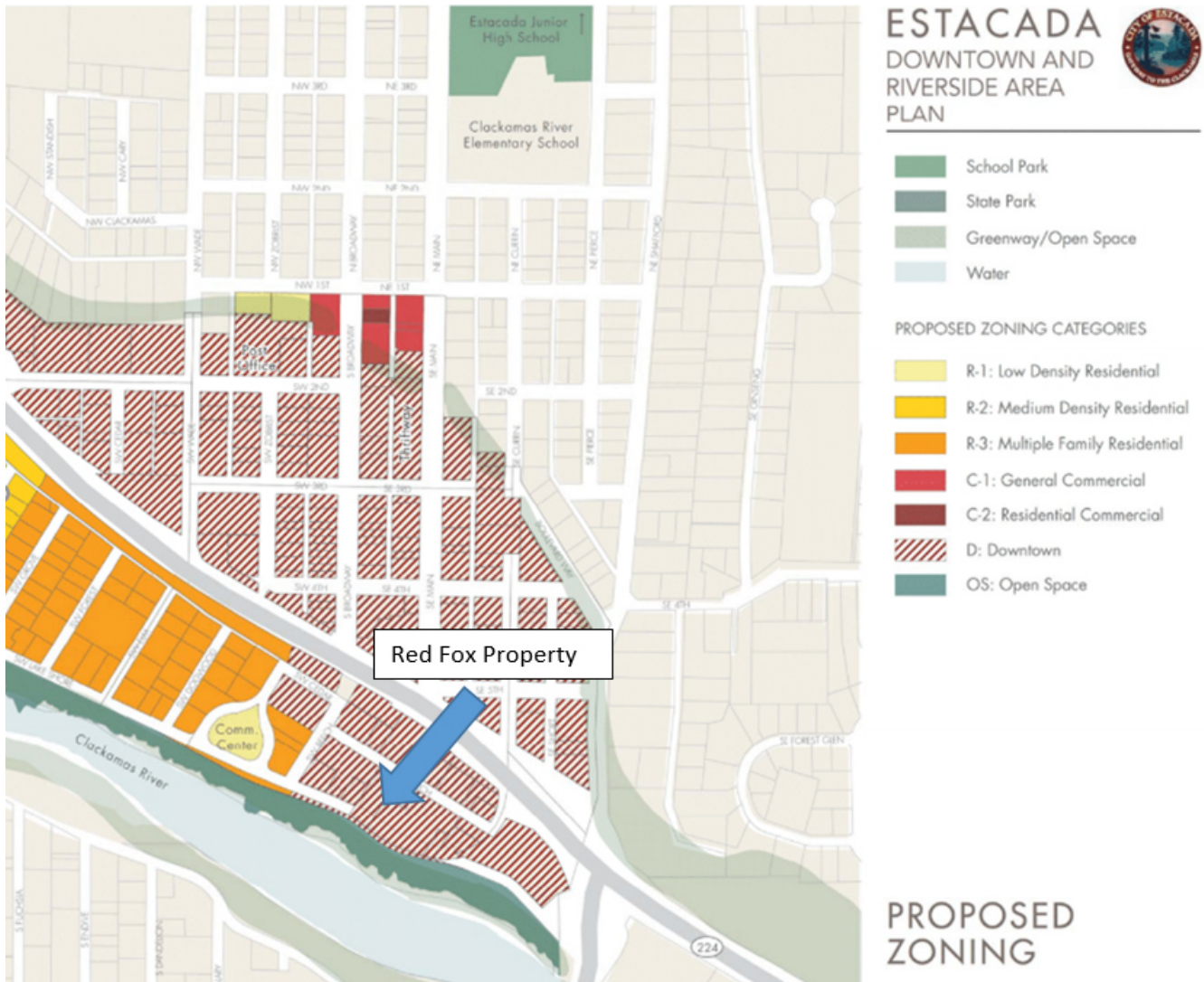


**FIGURE 2 – Red Fox Motel**

Red Fox Motel  
600 Southwest Beech Road | Estacada, OR 97023



**FIGURE 3 - Zoning**



January 28, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval to Accept Oregon Dept of Education Grant Amendment 1 for  
Coordinated Enrollment for Preschool Promise

<b>Purpose/Outcomes</b>	Approval to accept grant award Amendment from the State of Oregon through its Department of Education to expand coordinated enrollment activities to K-12 and Early Intervention/Early Childhood Special Education Programs. The goal is to create a collaborative and coordinated enrollment process for Clackamas County families who are eligible for publicly funding Early Care and Education Services, in addition to Preschool Promise.
<b>Dollar Amount and Fiscal Impact</b>	Grant Amendment increases award by \$170,500 for a total award amount of \$193,500. No County General Funds involved no match required.
<b>Funding Source</b>	State of Oregon through its Department of Education, Early Learning Division Grant no. 13320 Preschool Development Grant (\$23,000) Student Success Act Preschool Capacity Fund (\$155,208.52) State General Fund (\$15,291.48)
<b>Duration</b>	Effective July 1, 2020 – June 30, 2021
<b>Previous Board Action</b>	010721
<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>	This Grant Award has been reviewed and approved by County Counsel on December 23, 2020, 2020:KR
<b>Procurement Review</b>	Was the item processed through Procurement? No Grant Award amendment
<b>Contact Person</b>	Adam Freer 971-533-4929
<b>Contract No.</b>	9993

**BACKGROUND:**

The Children, Family and Community Connections Division of the Health, Housing, and Human Services Department requests the approval to accept State of Oregon Grant amendment to expand coordinated enrollment activities and to create a collaborative and coordinated enrollment process for Clackamas County families who are eligible for publicly funded Early Care and Education Services, in addition to Preschool Promise.

Preschool Promise, Head Start/Oregon Pre-Kindergarten and K-12 preschools in Clackamas County, along with the Early Learning HUB of Clackamas County are committed to working together to support high-quality early learning in the HUB Region (Clackamas County). The goal is to engage in regional coordination of publicly funded preschool, maximize resources to provide high-quality preschool to the greatest number of children in the region and prepare all children for success in kindergarten. Clackamas County HUB will support and manage coordinated enrollment for the region.

**RECOMMENDATION:**

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

Respectfully submitted,

*Joelney A. Cook, H3S Deputy/For*

Richard Swift, Director  
Health, Housing & Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

<b>H3S Contract #:</b> 9993	<b>Division:</b> CFCC	<input type="checkbox"/> Subrecipient
<b>Board Order #:</b>	<b>Contact:</b> Radford, Stephanie	<input checked="" type="checkbox"/> Revenue
	<b>Program Contact:</b> Freer, Adam	<input checked="" type="checkbox"/> Amend # 1 \$ \$170,500.00
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item     BCC Agenda    **Date:** Thursday, January 21, 2021

**CONTRACT WITH:** State of Oregon, Dept of Education

**CONTRACT AMOUNT:** \$193,500.00

**TYPE OF CONTRACT**

<input type="checkbox"/> Agency Service Contract	<input type="checkbox"/> Memo of Understanding/Agreement
<input type="checkbox"/> Construction Agreement	<input type="checkbox"/> Professional, Technical & Personal Services
<input type="checkbox"/> Intergovernmental Agreement	<input type="checkbox"/> Property/Rental/Lease
<input type="checkbox"/> Interagency Services Agreement	<input type="checkbox"/> One Off

**DATE RANGE**

<input type="checkbox"/> Full Fiscal Year _____ - _____	<input type="checkbox"/> 4 or 5 Year _____ - _____
<input checked="" type="checkbox"/> Upon Signature _____ - 6/30/2021	<input type="checkbox"/> Biennium _____ - _____
<input type="checkbox"/> Other _____ - _____	<input type="checkbox"/> Retroactive Request? _____

**INSURANCE** What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Business Automobile Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Professional Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

Approved by Risk Mgr \_\_\_\_\_  
Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Rastetter, Kathleen    Date Approved: Wednesday, December 23, 2020

OR

This contract is in the format approved by County Counsel as part of the H3S contract standardization project.

**SIGNATURE OF DIVISION REPRESENTATIVE:** Adam Freer

Date: 1.4.21

<b>H3S Admin Only</b>	Date Received: _____
	Date Signed: _____
	Date Sent: _____

# AGREEMENTS/CONTRACTS

New Agreement/Contract

Amendment/Change Order Original Number \_\_\_\_\_

**ORIGINATING COUNTY**

**DEPARTMENT:** Health, Housing Human Services  
Children, Family & Community Co

**PURCHASING FOR:** Contracted Services

**OTHER PARTY TO**

**CONTRACT/AGREEMENT:** State of Oregon, Dept of Education

**BOARD AGENDA ITEM**

**NUMBER/DATE:** \_\_\_\_\_

**DATE:** 1/21/2021

**PURPOSE OF**

**CONTRACT/AGREEMENT:** Clackamas County Early Learning HUB will implment and manage Coordinated Enrollment for Preschool Promise. Coordinated Enrollment will focus on enrolling children into the Early Learning Division's Preschool Promise program in Clackamas County. The goal is to engate in regional coordination of publicly funded preschool, maximize resources to provide high-quality preschool to the greatest number of children in the region and prepare all children for success in kindergarten.

This Amendment adds funding and extends the end date to expand coordinated enrollment activities to K-12 and Early Intervention/Early Childhood Special Education programs. The primary goal of this Amendment is to create a collaborative and coordinated enrollment process for families who are eligible for publicly funded Early Care and Education Services, in addition to Preschool Promise.

**H3S CONTRACT NUMBER:** 9993



### Amendment No. 1 to Grant No. 13320

This is Amendment No. 1 to Grant No. 13320, effective July 1, 2020 (as amended from time to time, the “Grant”), between the State of Oregon, acting by and through its Department of Education (“Agency”) and Clackamas County (“Grantee”). This Amendment is effective on the date signed by all Parties and upon receipt of all approvals necessary for signing (“Amendment Effective Date”).

The purpose of this Amendment is to add funding to expand coordinated enrollment activities to K-12 and Early Intervention/ Early Childhood Special Education (“EI/ECSE”) programs.

The primary goal of this Amendment is to create a collaborative and coordinated enrollment process for families who are eligible for publicly funded Early Care and Education Services, in addition to Preschool Promise.

The Grant is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

1. Section 3 of the Grant is amended as follows:

#### SECTION 3: EFFECTIVE DATE AND DURATION

When all Parties have executed this Grant, and all necessary approvals have been obtained (“Executed Date”), this Grant is effective and has a Grant funding start date as of July 1, 2020 (“Effective Date”), and, unless extended or terminated earlier in accordance with its terms, will expire on ~~December 30, 2020~~ **June 30, 2021**.

2. Section 4.1 of the Grant is amended as follows:

4.1 Agency’s Grant Manager is:

~~Teresa Waite~~  
~~700 Summer Street NE, Suite 350, Salem, OR~~  
~~97301~~  
~~Phone: 503-934-1891~~  
~~[teresa.n.waite@state.or.us](mailto:teresa.n.waite@state.or.us)~~

**Anne Morrison**  
**700 Summer Street NE, Suite 350**  
**Salem, OR 97301**  
**Phone: 971-701-1447**  
**[Anne.Morrison@state.or.us](mailto:Anne.Morrison@state.or.us)**

3. Section 6 of the Grant is amended as follows:

#### SECTION 6: GRANT FUNDS

**6.1** In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to ~~\$23,000.00~~ **\$193,500.00** (“Grant Funds”) for the Project. Agency will pay the Grant Funds from monies available through its federal Preschool Development Grant (**“PDG Funds”**), **the Student Success Act Preschool Development Capacity Fund (“SSA Funds”)**, and **the General Fund (collectively the “Funding Source,” subject to the limitations in Section 6.2)**.

**6.2 Grant Funds are available to Grantee for specific time periods as follows:**

<u>Funding Source</u>	<u>Period</u>	<u>Amount</u>
<u>PDG Funds</u>	<u>July 1, 2020 – December 30, 2020</u>	<u>\$23,000.00</u>
<u>SSA Funds</u>	<u>July 1, 2020 – June 30, 2021</u>	<u>\$155,208.52</u>
<u>General Fund</u>	<u>July 1, 2020 – June 30, 2021</u>	<u>\$15,291.48</u>
<b>Total Not-to-Exceed Amount:</b>		<b>\$193,500.00</b>

4. Additional definitions are hereby added to Section II of Exhibit A of the Grant:

**Early Intervention/ Early Childhood Special Education (“EI/ECSE”) program means services for children age 0-5 with disabilities.**

**K-12 program means a school district or elementary school that is offering preschool or that may participate in kindergarten transition activities.**

**Publicly Funded Preschool programs include EI/ECSE and K-12 programs.**

5. Section III, Parts A, B, C(1) and C(2) of Exhibit A of the Grant (PROJECT ACTIVITIES AND BUDGET) are amended to expand all activities to include K-12 and EI/ECSE programs. All instances of “Preschool Promise” in Section III, Parts B, C(1) and C(2) of Exhibit A of the Grant are hereby amended to say “Preschool Promise and EI/ECSE and K-12 programs”.
6. Section V of Exhibit A of the Grant is amended as follows:

**SECTION V. PROJECT EVALUATION/REPORTING REQUIREMENTS**

If the Performance Period begins prior to the Executed Date, any reports for Project activities shown in this Exhibit A as due prior to the Executed Date must be provided to Agency within 30 days of the Executed Date, if not already provided to Agency despite the lack of an executed Grant. Grantee will not be in default for failure to perform any reporting requirements prior to the Executed Date.

Grantee must submit the reports described in the table below to Agency using the tool(s) provided by the Agency.

<b>Reporting Requirements</b>	<b>Reporting Period</b>	<b>Due Date</b>
Progress report using an ELD-provided template	Monthly	By the 15 <sup>th</sup> of each month for the preceding month
Budget Report using an Agency-provided template	Duration of Grant	August 15, 2020
<b><u>Budget Report that describes how Grantee intends to utilize SSA Funds and General Fund money using an ELD-provided template</u></b>	<b><u>Duration of Grant</u></b>	<b><u>January 15, 2021</u></b>
<b><u>Outreach and Recruitment Plan Report for ECE Services, including EI/ECSE and K-12 programs, using an ELD-provided template</u></b>	<b><u>Duration of Grant</u></b>	<b><u>March 1, 2021</u></b>

<b><u>Coordinated Enrollment Plan Report for ECE Services, including EI/ECSE and K-12 programs, using an ELD-provided template</u></b>	<b><u>Duration of Grant</u></b>	<b><u>June 1, 2021</u></b>
Expenditure Report using an ELD-provided template	Quarterly (Quarter 1 is April – June, 2020)	No later than 45 days after the end of each quarter  <b><u>No later than 60 days after the end of each quarter beginning with Quarter 3 (October – December 2020)</u></b>

Except as expressly amended above, all other terms and conditions of the Grant are still in full force and effect. Grantee certifies that the representations, warranties and certifications contained in the Grant are true and correct as of the Amendment Effective Date and with the same effect as though made at the time of this Amendment.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Amendment electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Amendment, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

**STATE OF OREGON acting by and through its Department of Education**

By: \_\_\_\_\_  
Holley Oglesby, Contracting Officer

\_\_\_\_\_  
Date

**Clackamas County**

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID Number

**Approved for Legal Sufficiency in accordance with ORS 291.047**

By: Joshua Nasbe via email on 12/22/2020

\_\_\_\_\_  
Date



January 21, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of amendment #2 to Intergovernmental Revenue Agreement with the State of Oregon, Department of Human Services (DHS), for the operation of the Supplemental Nutrition Assistance Program (SNAP) Employment & Training

<b>Purpose/Outcome</b>	State of Oregon Dept of Human Services is providing funding to Clackamas County to deliver services to assist Supplemental Nutrition Assistance Program (SNAP) participants to obtain employment services to assist them with obtaining and maintaining meaningful employment.
<b>Dollar Amount and Fiscal Impact</b>	Contract increase of \$57,600 for a new contract total of \$156,628.85 No County General Funds are involved.
<b>Funding Source</b>	State of Oregon – Dept of Human Services (DHS) No. 165175
<b>Duration</b>	Effective date January 1, 2021 and terminates on September 30, 2021
<b>Previous Board Action/Review</b>	Original contract was approved by the Board on Sept 10, 2020.
<b>Strategic Plan Alignment</b>	1. Provide customized employment services to individuals with barriers to employment, and business partners, so they can obtain and retain meaningful employment through a successful job placement. 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	County Counsel has reviewed and approved this document. Date of counsel review: January 4, 2020, KR
<b>Procurement Review</b>	n/a
<b>Contact Person</b>	Adam Freer, 971-533-4929
<b>Contract No.</b>	H3S / CFCC 9840

**BACKGROUND:**

Children, Family & Community Connections (CFCC), a division of Health, Housing and Human Services Department requests the approval of amendment 2 to Intergovernmental Agreement 165175 with the State of Oregon, Department of Human Services to serve participants receiving Supplemental Nutrition Assistance Program (SNAP) benefits. Clientele will be referred to CFCC from various agencies, including Clackamas County Corrections, to receive the job search training, employment placement and retention services required to obtain and retain meaningful employment within the community.

This new agreement does not alter the services to be performed, only adds funding in the amount of \$57,600, for the time period of 1/1/21 to 9/30/21. Funding is specifically for participant support services, to assist with housing, utilities, child care, transportation, and other expenses to support the employment case plan.

**RECOMMENDATION:**

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

Respectfully submitted,

*Deby Alcock, H3S deputy / for*

Richard Swift, Director  
Health, Housing & Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

H3S Contract #: 9840

Division: CFC

Subrecipient

Board Order #:

Contact: Vandecoevering, Scott

Revenue

Program Contact:

Amend # 2 \$ 57,600.00

Harvey, Jennifer

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

Date: Thursday, January 21, 2021

CONTRACT WITH: State of Oregon DHS SNAP

CONTRACT AMOUNT: \$156,628.85

### TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

### DATE RANGE

Full Fiscal Year

4 or 5 Year

Upon Signature - 9/30/2021

Biennium

Other

Retroactive Request?

### INSURANCE What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Business Automobile Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Professional Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No  Yes (must have CC approval-next box)  N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by: Kathleen Rastetter

Date Approved: Monday, January 4, 2021

OR

This contract is in the format approved by County Counsel.

SIGNATURE OF DIVISION REPRESENTATIVE:

Date: 1/5/21

H3S Admin  
Only

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

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

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

## AGREEMENTS/CONTRACTS

New Agreement/Contract  
X Amendment/Change Order Original Number \_\_\_\_\_

**ORIGINATING COUNTY**

**DEPARTMENT: Health, Housing Human Services  
Children, Family & Community Co**

**PURCHASING FOR: Contracted Services**

**OTHER PARTY TO**

**CONTRACT/AGREEMENT: State of Oregon DHS SNAP**

**BOARD AGENDA ITEM**

**NUMBER/DATE:**

**DATE: 1/21/2021**

**PURPOSE OF**

**CONTRACT/AGREEMENT:** County shall deliver SNAP E&T (Employment & Training services, to assist Supplemental Nutrition Assistance Program (SNAP) participants to obtain training and employment services to assist them with obtaining and maintaining employment.

Add \$57,600 in additional revenue for participant support services.

**H3S CONTRACT NUMBER: 9840**





**Agreement Number 165175**

**AMENDMENT TO  
STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This is amendment number **2** to Agreement Number **165175** between the State of Oregon, acting by and through its Oregon Department of Human Services, hereinafter referred to as “ODHS” and

**Clackamas County**  
**Acting by and through its Department of Health, Housing and Human Services Children,**  
**Family & Community Connections division**  
**112 11th Street**  
**Oregon City, OR 97045,**  
**Attention: Jennifer Harvey**  
**Telephone: 503-867-7500**  
**E-mail address: [jharvey@clackamas.us](mailto:jharvey@clackamas.us)**

hereinafter referred to as “**County.**”

1. Upon signature by all applicable parties, this Amendment shall be effective on the later of (a) January 1, 2021 or (b) the date this Amendment has been approved by ODHS, or when required, (c) the date this Amendment has been approved by the Department of Justice, regardless of the date the Amendment is actually signed by all other parties.
2. The Agreement is hereby amended as follows:
  - a. The parties acknowledge and agree that, effective August 7, 2020, all references to Department of Human Services shall mean Oregon Department of Human Services and all references to DHS shall mean ODHS.
  - b. Section 3. “**Consideration,**” paragraph a. only, is amended as follows: Deleted language is ~~struck through~~, and new language is **underlined and bold.**

The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is ~~\$156,628.85~~ ~~\$99,028.85~~. **ODHS** will not pay County any amount in excess of the not-to-exceed amount for completing the Work and will not pay for Work until this Agreement has been signed by all parties.

- c. **Exhibit A, Part 2, “Payment and Financial Reporting”, section 1. “Payment Provisions”, subsection a.** only, is amended as follows: Deleted language is ~~struck through~~, and new language is **underlined and bold**.
- a. County shall not submit payment requests for, and **ODHS** will not pay, any amount in excess of the maximum compensation amount set forth in Section 3. “Consideration” of this Agreement. Payments for Services shall not exceed the amount assigned to the Budget Categories and time periods specified below.
- (1) From October 1, 2020 through September 30, 2021:  
 Total Budget \$99,028.85  
**Support Service Funds awarded January 1, 2021 through September 30, 2021**  
**Support Service Funds: \$57,600.00**
- (2) Any unused funding awarded in the FFY budget period cannot be allocated to a previous or subsequent FFY budget period.
3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.
4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement amendment, the County hereby certifies under penalty of perjury that:
- a. The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;
- b. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
- c. To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
- d. County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

- e. County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Nonprocurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>;
- f. County is not subject to backup withholding because:
  - (1) County is exempt from backup withholding;
  - (2) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (3) The IRS has notified County that County is no longer subject to backup withholding.
- g. County Federal Employer Identification Number (FEIN) provided to ODHS is true and accurate. If this information changes, County is required to provide ODHS with the new FEIN within 10 days.

**5. Signatures.**

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

**Clackamas County Acting by and through its Department of Health, Housing and Human Services Children, Family & Community Connections division**  
**By:**

Authorized Signature	Printed Name
Title	Date

**State of Oregon acting by and through its Oregon Department of Human Services**  
**By:**

Authorized Signature	Printed Name
Title	Date

**Approved for Legal Sufficiency:**

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General Department of Justice	12/31/2020 Date
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January 28, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Revenue Grant Amendment 1 with  
Oregon Department of Education, Early Learning Division for Healthy Families Oregon

<b>Purpose/Outcome</b>	Healthy Families programming includes screening and home visiting services to high risk families initiated prenatally and at the time of birth through the child's third birthday to promote healthy child development and reduce the risk of child abuse and neglect. This amendment provides funding from the Student Success Act to allow pass-through funds for Healthy Families sub-recipient to hire additional staff in order to serve more families.
<b>Dollar Amount and Fiscal Impact</b>	Grant Amendment 1 increases award by \$91,823 for a total award amount of \$1,792,540.58 No County General Fund involved and no match required.
<b>Funding Source</b>	State of Oregon, Department of Education Early Learning Division Grant Agreement #12573 State of Oregon General Fund (\$1,346,757.58) Title IV-B2 Catalog of Federal Award No. 93.556 (\$169,960) Title XIX Catalog of Federal Award No.93.778 (\$184,000) Student Success Act (\$91,823)
<b>Duration</b>	Effective date July 1, 2020 and terminates on September 30, 2021
<b>Previous Board Action/Review</b>	020620
<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>	This Grant Award has been reviewed and approved by County Counsel on December 23, 2020: KR
<b>Procurement Review</b>	Was the item processed through Procurement? No Grant Award
<b>Contact Person</b>	Adam Freer 971-533-4929
<b>Contract No.</b>	H3S9597

**BACKGROUND:**

The Children, Family & Community Connections Division of the Health, Housing and Human Services Department requests the approval of Revenue Grant Amendment 1 for Healthy Families Oregon (HFO) services. HFO is an evidence-based, voluntary, home visiting program nationally accredited by Health Families America. HFO contributes to the economic prosperity of Oregon by preventing child abuse and neglect, promoting healthy child development, improving family self-sufficiency, and helping parents prepare their children for kindergarten.

This Grant Amendment adds \$91,823 for a total award of \$1,792,540.58.

*Healthy Families. Strong Communities.*

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

[www.clackamas.us](http://www.clackamas.us)

**RECOMMENDATION:**

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

Respectfully submitted,

 Rodney A. Cook, H3S deputy / for

Richard Swift, Director  
Health, Housing & Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

<b>H3S Contract #:</b> 9597	<b>Division:</b> CFCC	<input type="checkbox"/> Subrecipient
<b>Board Order #:</b>	<b>Contact:</b> Radford, Stephanie	<input checked="" type="checkbox"/> Revenue
	<b>Program Contact:</b> Radford, Stephanie	<input checked="" type="checkbox"/> Amend # 1 \$ 91,823.00
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item     BCC Agenda    **Date:** Thursday, January 21, 2021

**CONTRACT WITH:** State of Oregon - Dept of Education, ELD Division

**CONTRACT AMOUNT:** \$1,792,540.58

**TYPE OF CONTRACT**

<input type="checkbox"/> Agency Service Contract	<input type="checkbox"/> Memo of Understanding/Agreement
<input type="checkbox"/> Construction Agreement	<input type="checkbox"/> Professional, Technical & Personal Services
<input type="checkbox"/> Intergovernmental Agreement	<input type="checkbox"/> Property/Rental/Lease
<input type="checkbox"/> Interagency Services Agreement	<input type="checkbox"/> One Off

**DATE RANGE**

<input type="checkbox"/> Full Fiscal Year _____ - _____	<input type="checkbox"/> 4 or 5 Year _____ - _____
<input checked="" type="checkbox"/> Upon Signature _____ - 9/30/2021	<input type="checkbox"/> Biennium _____ - _____
<input type="checkbox"/> Other _____ - _____	<input type="checkbox"/> Retroactive Request? _____

**INSURANCE** What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Business Automobile Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

**Professional Liability:**     Yes     No, not applicable     No, waived  
If no, explain why: \_\_\_\_\_

Approved by Risk Mgr \_\_\_\_\_  
Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Rastetter, Kathleen    Date Approved: Wednesday, December 23, 2020

OR

This contract is in the format approved by County Counsel as part of the H3S contract standardization project.

**SIGNATURE OF DIVISION REPRESENTATIVE:**  \_\_\_\_\_  
Date: 1.4.21

<b>H3S Admin Only</b>	Date Received: _____
	Date Signed: _____
	Date Sent: _____

# AGREEMENTS/CONTRACTS

New Agreement/Contract

Amendment/Change Order Original Number

## ORIGINATING COUNTY

DEPARTMENT: Health, Housing Human Services  
Children, Family & Community Co

PURCHASING FOR: Contracted Services

## OTHER PARTY TO

CONTRACT/AGREEMENT: State of Oregon - Dept of Education, ELD Division

## BOARD AGENDA ITEM

NUMBER/DATE: \_\_\_\_\_

DATE: 1/21/2021

## PURPOSE OF

CONTRACT/AGREEMENT: Healthy Families Oregon (HFO) is an evidence-based, voluntary, home visiting program nationally accredited by Healthy Families America. HFO contributes to the economic prosperity of Oregon by preventing child abuse and neglect, promoting healthy child development, improving family self-sufficiency, and helping parents prepare their children for kindergarten.

Amend 1 from Oregon Early Learning Division provides funding from the Student Success Act to allow apss-through funds for Healthy Families sub-reciipient to hire additional staff in order to serve more families.

H3S CONTRACT NUMBER: 9597



**Amendment No. 1 to Grant No. 12573**

This is Amendment No. 1 to Grant No. 12573, effective October 1, 2019 (as amended from time to time, the “Grant”), between the State of Oregon, acting by and through its Department of Education (“Agency”) and Clackamas County (“Grantee”). This Amendment is effective on the date signed by all Parties and upon receipt of all approvals necessary for signing (“Amendment Effective Date”).

**RECITALS**

The purpose of this Amendment is to:

- Remove some of the reporting requirements associated with equity reports. Grantee required Agency-provided information to complete these reports; Agency was not able to provide the needed information due to COVID-19; and
- Provide funding from the Student Success Act (2019) to allow Grantee to hire additional staff in order to serve more families as described in Grantee’s application submitted in response to Agency’s Request for Applications dated September 22, 2020. Grantee’s application is incorporated by reference.

The Grant is amended as follows (new language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~):

1. Section 6 of the Grant is amended as follows:

**SECTION 6: GRANT FUNDS**

In accordance with the terms and conditions of this Grant, Agency will provide Grantee up to ~~\$1,700,717.58~~ **\$1,792,540.58** (“Grant Funds”) for the Project. Agency will pay the Grant Funds from monies available through its General Fund and Other Funds appropriations and with federal funds provided to Agency under the Title IV-B2 of the federal Social Security Act for promoting safe and stable families as set forth below (“Funding Source”):

Source	10/1/2019 - 6/30/2021	<u>7/1/2020 - 6/30/2021</u>	7/1/2021 - 9/30/2021	Total
General Fund/ Other Funds for HFO Services	\$1,178,412.88		\$168,344.70	\$1,346,757.58
Federal Title IV-B2 for Family Support	\$148,715.00		\$21,245.00	\$169,960.00
Medicaid pass-through funding from Oregon Health Authority	\$161,000.00		\$23,000.00	\$184,000.00
<b><u>Student Success Act</u></b>		<b><u>\$91,823.00</u></b>		<b><u>\$91,823.00</u></b>
<b>Grand Total</b>	<b>\$1,488,127.88</b>	<b><u>\$91,823.00</u></b>	<b>\$212,589.70</b>	<del><b>\$1,700,717.58</b></del> <b><u>\$1,792,540.58</u></b>

2. Exhibit A, Section III, part 5. of the Grant is amended as follows:

**5. EQUITY ACTIVITIES.** Grantee must use the equity goals in its Program Goal Plan to create an equity work plan outlining the equity domains to be addressed and demonstrating how the demographic analysis from the previous grant period informs the equity of the Project activities under this Agreement. In addition, Grantee must:

- a. Ensure that all staff providing services to historically underserved populations complete equity training approved by the Agency and submit training certificates or other documentation to Agency evidencing that the training was completed.
- ~~b. Complete a demographic analysis comparing population demographics of the Service Delivery Area with the actual population served over the Grant period using the information provided by the Agency and submit to the Agency an annual written demographic analysis of the Service Delivery Area.~~
- ~~c. Using the information collected from the Grantee’s previously completed equity self assessment and demographic analysis, Grantee must identify any gaps in services currently available within the Grantee’s Service Delivery Area and submit a written work plan to the Agency addressing the gaps and the actions that Grantee proposes to take in order to fill any gaps in the services described in this Grant.~~

3. Exhibit A, Section IV, part a. of the Grant is amended as follows:

- a. Agency will disburse the Grant Funds using its Electronic Grants Management System (“EGMS”), on a cost incurred basis upon monthly or quarterly receipt of Grantee’s request for reimbursement. With each request for reimbursement, Grantee must submit an expenditure report via Smartsheet (or such other method as may be provided by notice from Agency) to Agency’s Grant Manager identified in Section 4. The Agency’s grant manager will provide the Grantee with an agency specific link to Smartsheet reporting.

Source	10/1/2019 – 6/30/2021	7/1/2020 – 6/30/2021	7/1/2021 – 9/30/2021	Total
General Fund/ Other Funds for HFO Services	\$1,178,412.88		\$168,344.70	\$1,346,757.58
Federal Title IV-B2 for Family Support	\$148,715.00		\$21,245.00	\$169,960.00
Medicaid pass- through funding from Oregon Health Authority	\$161,000.00		\$23,000.00	\$184,000.00
<b>Student Success Act</b>		<b>\$91,823.00</b>		<b>\$91,823.00</b>
<b>Grand Total</b>	<b>\$1,488,127.88</b>	<b>\$91,823.00</b>	<b>\$212,589.70</b>	<b>\$1,700,717.58</b> <b>\$1,792,540.58</b>

4. Exhibit A, Section V, part e. of the Grant is amended as follows:

e. In addition, Grantee must submit the following reports by the due dates listed in the table below:

Reporting Requirements	Due Dates
<p><b>Healthy Families Oregon implementation reports:</b></p> <ol style="list-style-type: none"> <li>1. Completion of tasks outlined in the Quality Assurance (QA) Calendar.</li> <li>2. Quarterly Program Outcomes report: Including at a minimum, caseload points for each Home Visitor, number of families served, number of new families enrolled, and staff Home Visit completion percentages. The Quarterly Outcomes report must be submitted before any request for funds is approved.</li> <li>3. Program Expenditure report: Includes a breakdown of expenditures for the reporting time period</li> </ol>	<p>Reports are due to the Agency in accordance with the Quality Assurance (QA) Calendar. The QA Calendar can be found at <a href="https://oregonearlylearning.com/healthy-families-oregon">https://oregonearlylearning.com/healthy-families-oregon</a></p> <p>30<sup>th</sup> day of the month following the end of each quarter</p> <p>Either monthly or quarterly by the 30th day of the following month</p>
<p><b>Equity reports:</b></p> <ol style="list-style-type: none"> <li>1. <del>Equity Goals Report: Outlining the equity domains to be addressed and demonstrating how the demographic analysis from the previous contracting year informs the equity of the services provided under this Grant.</del></li> <li>2. Evidence of equity training completion</li> <li>3. <del>Annual written demographic analysis of the service delivery area.</del></li> <li>4. <del>Equity goals and report on identified service gaps</del></li> </ol>	<p><del>March 31, 2020</del></p> <p><del>August 30, 2020</del> <b>May 31, 2021</b></p> <p><del>September 30, 2020 and September 30, 2021</del></p> <p><del>September 30, 2020 and September 30, 2021</del></p>

Reporting Requirements	Due Dates
<p><b>Budgets:</b></p> <ol style="list-style-type: none"> <li>1. Final budget for approval by Agency</li> <li>2. Budget update and narrative on Agency template.</li> </ol>	<p>October 25, 2019 August 31, 2020</p>
<p><b>Medicaid Administrative Claiming (MAC):</b></p> <ol style="list-style-type: none"> <li>1. Report on the use of Medicaid Administrative Claiming (Title XIX) funds disbursed to Grantee using Medicaid Reinvestment form, provided by Agency. Grantee must follow the fiscal guidelines (outlined in the PPPM) in spending MAC reimbursement funding.</li> </ol>	<p>August 31, 2020 and August 31, 2021</p>

If the Performance Period begins prior to the Executed Date of this Grant, any reports for Project activities shown above as due prior to the Executed Date must be provided to Agency within 30 days of the Executed Date, if not already provided to Agency despite the lack of an executed Grant. Grantee will not be in default for failure to perform any reporting requirements prior to the Executed Date.

Except as expressly amended above, all other terms and conditions of the Grant are still in full force and effect. Grantee certifies that the representations, warranties and certifications contained in the Grant are true and correct as of the Amendment Effective Date and with the same effect as though made at the time of this Amendment.

EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES IT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. The Parties further agree that by the exchange of this Amendment electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intends to execute this Amendment, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

*(The remainder of this page has been left intentionally blank. Signatures follow.)*

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

**STATE OF OREGON acting by and through its Department of Education**

By: \_\_\_\_\_  
Holley Oglesby, Contracting Officer

\_\_\_\_\_  
Date

**Clackamas County**

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID Number

**Approved for Legal Sufficiency in accordance with ORS 291.047**

By: Cynthia Byrnes via email on 12/8/2020

\_\_\_\_\_  
Date



January 28, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment #14 to Intergovernmental Agreement #159159 with the State of Oregon, Acting by and through its Oregon Health Authority, for the operation and financing of Community Mental Health, Addiction Treatment, Recovery & Prevention Services, and Problem Gambling Programs

<b>Purpose/Outcomes</b>	This Agreement provides funding for the local administration and operation of behavioral health and addiction program services to residents of Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	Amendment adds \$193,913.73 to the value of the Agreement. New agreement maximum value is \$13,988,283.48.
<b>Funding Source</b>	No County General Funds are involved. Funding provided by State of Oregon, Oregon Health Authority.
<b>Duration</b>	Effective upon signature and terminates on December 31, 2020.
<b>Previous Board Action</b>	Board reviewed and approved Amendment #12 on December 10, 2020, Agenda Item 121020-A3.
<b>Counsel Review</b>	Reviewed and approved January 4, 2021 (KR).
<b>Procurement Review</b>	Was this item processed through Procurement? No. This is a revenue agreement.
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
<b>Contract No.</b>	9334

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #14 to Intergovernmental Agreement #159159 with the State of Oregon, acting by and through its Oregon Health Authority for the financing and operation of Community Mental Health, Addiction Treatment, Recovery & Prevention Services and Problem Gambling Programs in Clackamas County. The Board of County Commissioners is the Local Mental Health Authority for Clackamas County that operates a Community Mental Health Program funding by this Agreement. The Behavioral Health Division ensures that the funds are administered according to the terms set forth by this Agreement to provide local administration, behavioral health and addiction services to Clackamas County.

This Amendment, providing \$193,913.73, is effective upon signature and terminates December 31, 2020. Funding is being adjusted to multiple services elements to balance out specific funds. The new maximum value of the Agreement is \$13,988,283.48.

**RECOMMENDATION:**

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

Respectfully submitted,



Richard Swift, Director  
Health, Housing & Human Services Department



# Contract Transmittal Form

## Health, Housing & Human Services Department

H3S Contract #: 9334

Division: BH

Subrecipient

Board Order #:

Contact: Russell, Angela

Revenue

Program Contact:

Amend # 14 \$ \$193,913.73

Brink, Angela

Procurement Verified

Aggregate Total Verified

Non BCC Item  BCC Agenda Date: \_\_\_\_\_

CONTRACT WITH: State of Oregon, OHA

CONTRACT AMOUNT: \$13,988,283.48

### TYPE OF CONTRACT

- |   |  |
|---|--|
| <input type="checkbox"/> Agency Service Contract                | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement                 | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input checked="" type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease                       |
| <input type="checkbox"/> Interagency Services Agreement         | <input type="checkbox"/> One Off                                     |

### DATE RANGE

- |   |  |
|---|--|
| <input type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____                             |
| <input type="checkbox"/> Upon Signature _____ - _____   | <input type="checkbox"/> Biennium _____ - _____                                |
| <input type="checkbox"/> Other _____ - _____            | <input checked="" type="checkbox"/> Retroactive Request? 7/1/2019 - 12/31/2020 |

### INSURANCE What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**  Yes  No, not applicable  No, waived

If no, explain why: \_\_\_\_\_

**Business Automobile Liability:**  Yes  No, not applicable  No, waived

If no, explain why: \_\_\_\_\_

**Professional Liability:**  Yes  No, not applicable  No, waived

If no, explain why: \_\_\_\_\_

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No  Yes (must have CC approval-next box)  N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by: Rastetter, Kathleen Date Approved: Monday, January 4, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE:

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

H3S Admin  
Only

Date Received: \_\_\_\_\_  
Date Signed: \_\_\_\_\_  
Date Sent: \_\_\_\_\_



In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

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

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

**RECITALS**

WHEREAS, OHA and County wish to modify the Financial Assistance Award set forth in Exhibit C of the Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**AGREEMENT**

1. The financial and service information in the Financial Assistance Award are hereby amended as described in Attachment 1 attached hereto and incorporated herein by this reference. Attachment 1 must be read in conjunction with the portion of Exhibit C of the Agreement that describes the effect of an amendment of the financial and service information.
2. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
3. County represents and warrants to OHA that the representations and warranties of County set forth in section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
4. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
5. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the dates set forth below their respective signatures.

**6. Signatures.**

**Clackamas County**  
**By:**

\_\_\_\_\_  
Authorized Signature                      Printed Name                      Title                      Date

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

\_\_\_\_\_  
Authorized Signature                      Printed Name                      Title                      Date

**Approved by: Director, OHA Health Systems Division**  
**By:**

\_\_\_\_\_  
Authorized Signature                      Printed Name                      Title                      Date

Approved for Legal Sufficiency:

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

**OHA Program:**

Approved by Sheryl Derting on December 21, 2020; e-mail in contract file.

# ATTACHMENT 1

## EXHIBIT C Financial Pages

### MODIFICATION INPUT REVIEW REPORT

MOD#: M0247

CONTRACT#: 159159

CONTRACTOR: CLACKAMAS COUNTY

INPUT CHECKED BY: \_\_\_\_\_ DATE CHECKED: \_\_\_\_\_

SE#	FUND	PROJ CODE	CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2019-2020													
		<b>BCIVLM</b>	<b>RENTAL ASSISTANCE</b>										
12	804	RNTAST		7/1/2019 - 6/30/2020	30 /SLT	\$0.00	-\$39,077.00	\$0.00	C	1	Y		1
					TOTAL FOR SE# 12		<u>-\$39,077.00</u>	<u>\$0.00</u>					
		<b>BASE</b>	<b>NON-RESIDENTIAL MENT</b>										
20	804	MHNRMH		7/1/2019 - 6/30/2020	0 /NA	\$0.00	\$319,833.82	\$0.00	A	1	Y		2
					TOTAL FOR SE# 20		<u>\$319,833.82</u>	<u>\$0.00</u>					
		<b>BASE</b>	<b>COMMUNITY CRISIS SER</b>										
25	301	CRISIS		7/1/2019 - 6/30/2020	0 /NA	\$0.00	\$1,489,311.00	\$0.00	A	1	N		3
		<b>BASE</b>	<b>COMMUNITY CRISIS SER</b>										
25	804	CRISIS		7/1/2019 - 6/30/2020	0 /NA	\$0.00	-\$1,489,311.00	\$0.00	A	1	N		3
					TOTAL FOR SE# 25		<u>\$0.00</u>	<u>\$0.00</u>					
					TOTAL FOR 2019-2020		<u>\$280,756.82</u>	<u>\$0.00</u>					
FISCAL YEAR: 2020-2021													
		<b>BCIVLM</b>	<b>RENTAL ASSISTANCE</b>										
12	804	RNTAST		7/1/2020 - 12/31/2020	30 /SLT	\$0.00	-\$203,760.00	\$0.00	C	1	Y		1
					TOTAL FOR SE# 12		<u>-\$203,760.00</u>	<u>\$0.00</u>					
		<b>BASE</b>	<b>NON-RESIDENTIAL MENT</b>										
20	804	MHNRMH		7/1/2020 - 12/31/2020	0 /NA	\$0.00	\$159,916.91	\$0.00	A	1	Y		2
					TOTAL FOR SE# 20		<u>\$159,916.91</u>	<u>\$0.00</u>					
		<b>BASE</b>	<b>INVOICE SERVICES</b>										
28	804	INVOIC		7/1/2020 - 12/31/2020	0 /NA	\$0.00	-\$43,000.00	\$0.00	C	1	Y		4
					TOTAL FOR SE# 28		<u>-\$43,000.00</u>	<u>\$0.00</u>					
					TOTAL FOR 2020-2021		<u>-\$86,843.09</u>	<u>\$0.00</u>					
					TOTAL FOR M0247 159159		<u>\$193,913.73</u>	<u>\$0.00</u>					

OREGON HEALTH AUTHORITY  
Financial Assistance Award Amendment (FAAA)

CONTRACTOR: CLACKAMAS COUNTY  
DATE: 12/16/2020

Contract#: 159159  
REF#: 015

REASON FOR FAAA (for information only):

The Financial Assistance Agreement is for Mental Health Services within the 2019-2021 Legislatively Adopted Budget (LAB) for OHA. Enclosed funding changes are batched into one amendment and cover one or more of the following items in order to complete required amendments for the period July 1, 2019 - December 31, 2020: Residential Rate Increase; CCBHC Reduction; Part C Invoicable funding reductions; funding movement to balance out specific funds, including Tobacco Tax, Other fund carryover, and the Mental Health Block Grant.

The Financial Assistance Agreement is for Mental Health Services within the 2019-2021 Legislatively Adopted Budget (LAB) for OHA. Enclosed funding changes are batched into one amendment and cover one or more of the following items in order to complete required amendments for the period July 1, 2019 - December 31, 2020: Residential Rate Increase; CCBHC Reduction; Part C Invoicable funding reductions; funding movement to balance out specific funds, including Tobacco Tax, Other fund carryover, and the Mental Health Block Grant.

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

- M0247 1 These funds are for MHS 12 Services Part C reduction from July 1, 2019 to December 31, 2020.
- M0247 1 These funds are for MHS 12 Services Part C reduction from July 1, 2019 to December 31, 2020.
- M0247 2 These funds are for MHS 20 Services Residential Rate Increase from July 1, 2019 to December 31, 2020.
- M0247 2 These funds are for MHS 20 Services Residential Rate Increase from July 1, 2019 to December 31, 2020.
- M0247 3 These funds are for MHS 25 Services to move from Fund 804 to Fund 301.
- M0247 3 These funds are for MHS 25 Services to move from Fund 804 to Fund 301.
- M0247 4 These funds are for MHS 28 Services Part C reduction from July 1,

OREGON HEALTH AUTHORITY  
Financial Assistance Award Amendment (FAA)

CONTRACTOR: CLATSOP COUNTY  
DATE: 12/16/2020

Contract#: 159159  
REF#: 015

2019 to December 31, 2020.





January 28, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Amended and Restated County-Based Services Agreement with Health Share of Oregon for Public Health and Behavioral Health Care and Services

<b>Purpose/Outcomes</b>	This Agreement provides funding for the operation of public health and certain behavioral health care and services to Health Share members in Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	Revenue contract, maximum value of \$3,764,939
<b>Funding Source</b>	No County General Funds are involved. Oregon Health Plan funds provided through Health Share of Oregon
<b>Duration</b>	Effective January 1, 2021 and terminates December 31, 2021
<b>Previous Board Action</b>	None
<b>Counsel Review</b>	Reviewed and approved by Counsel January 4, 2021 (KR)
<b>Procurement Review</b>	Was this item reviewed by Procurement? No. Procurement review is not required for revenue agreements
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Agreement No.</b>	9996

**BACKGROUND:**

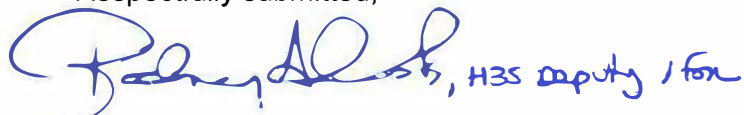
The Public Health and Behavioral Health Divisions of the Health, Housing & Human Services Department request the approval of the County-Based Services Agreement with Health Share of Oregon for the following work: Public Health's, Regional Perinatal Continuum of Care; Tobacco Prevention and Cessation; and Implementation of a Community Health Assessment (CHA) and Community Health Improvement Plan (CHIP) and Behavioral Health's: Health Promotion; Peer Services; a 24-hour Crisis Telephone Line; and additional Crisis Services.

This Agreement is effective January 1, 2021 and terminates December 31, 2021, with a maximum value of \$3,764,939. Public Health's funding is \$690,443. Behavioral Health's funding is \$3,074,496.

**RECOMMENDATION:**

Staff respectfully requests Board approval of the Agreement and approval for Richard Swift, H3S Director, to sign on behalf of the County.

Respectfully submitted,



Richard Swift, Director  
Health, Housing & Human Services Department

*Healthy Families. Strong Communities.*

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

Clackamas.us/h3s



# Contract Transmittal Form

## Health, Housing & Human Services Department

H3S Contract #: 9996

Division: BH

Subrecipient

Board Order #:

Contact: Russell, Angela

Revenue

Program Contact:

Amend # \$

Rumbaugh, Mary

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

Date: Thursday, January 21, 2021

**CONTRACT WITH:** Health Share of Oregon

**CONTRACT AMOUNT:** \$3,764,939.00

### TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

### DATE RANGE

Full Fiscal Year

4 or 5 Year

Upon Signature

Biennium

Other

Retroactive Request? 1/1/2021 - 12/31/2021

### INSURANCE What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Business Automobile Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Professional Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No

Yes (must have CC approval-next box)

N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why:

### COUNTY COUNSEL

Yes by: Rastetter, Kathleen

Date Approved: Monday, January 4, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

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

H3S Admin  
Only

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

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

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



**HEALTH SHARE OF OREGON  
AMENDED AND RESTATED  
COUNTY-BASED SERVICES AGREEMENT**

This Amended and Restated County-Based Services Agreement (“Agreement”) is effective as of the 2021 A&R Effective date set forth below by and between **Health Share of Oregon**, an Oregon nonprofit corporation (“Health Share”), and **Clackamas County** (“County”).

**RECITALS**

A. Health Share was created as a Coordinated Care Organization (“CCO”), to enter into a risk contract that covers coordinated care services with the Oregon Health Plan (“OHP”), and facilitate the management and coordination of patient care for OHP members (“Members”) and individuals who are dually eligible for coverage under OHP and the Medicare program (“Fully Dual Eligible Members”);

B. Health Share has entered into a new five-year contract with the Oregon Health Authority (“OHA”) as CCO, effective October 1, 2019, with a coverage effective date of January 1, 2020;

C. Health Share is obligated under the terms of its contract with OHA to coordinate its service delivery system with, engage and collaborate with representatives in the development of its community health assessment, and enter into a memorandum of understanding with the local mental health and public health authorities in its service area;

B. Health Share further desires to make advantageous use of the system of public health care and services available through local health departments and other publicly supported programs and to ensure access to public health care and services pursuant to ORS § 414.153;

C. County offers public health and certain mental health care and services and is willing to collaborate with Health Share on the provision of services to Health Share members and provide certain services directly to Health Share members; and

D. Health Share desires, in support of improving member health, to collaborate with County and to contract with County to provide public health care and services to Health Share members; and County wishes to provide public health care and services to Health Share members in support of Health Share’s goals, all in accordance with the terms and conditions set forth in this Agreement.

E. Health Share and County entered into this Agreement with an original Effective Date of January 1, 2020.

F. Health Share and County now desire to amend and restate the Agreement in its entirety effective as of January 1, 2021 (“2021 A&R Effective Date), regardless of the date

of signature. For clarity, the amendment and restatement of this Agreement does not affect the applicability of the terms and conditions that were in place prior to the 2021 A&R Effective Date for dates occurring before the 2021 A&R Effective Date.

## AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and promises contained herein, Health Share and County agree as follows:

### ARTICLE I DEFINITIONS

In addition to any terms that may be defined in this Article I or elsewhere in this Agreement, the terms in this Agreement have the same meaning as those terms appearing in the Core Contract, Exhibit A, titled “Definitions” which shall be incorporated herein by reference.

“**Core Contract**” means that certain Coordinated Care Organization Contract in effect during the term of the Agreement by and between the State of Oregon, acting through the Oregon Health Authority, and Health Share, as the same may be updated, amended, modified, or supplemented from time to time.

“**Health Share Partner**” means an entity that has entered into an agreement with Health Share titled Integrated Delivery System Participation Contract or an agreement titled Integrated Community Network Participation Contract.

“**Medically Necessary**” means services and medical supplies required for prevention, diagnosis or treatment of a health condition that encompasses physical or mental conditions, or injuries and are (a) consistent with the symptoms of a health condition or treatment of a health condition; (b) appropriate with regard to standards of good medical practice and generally recognized by the relevant scientific community and professional standards of care as effective; (c) not solely for the convenience of a Member or a provider of the service or medical supplies, and; (d) the most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a Member.

“**Member**” means a person who is enrolled in a Plan with Health Share, generally identifiable through a Health Share identification card issued to the person, and who is eligible to receive Services.

“**Plan**” means the contract or arrangement that has been established with Health Share, including contracts or arrangements established by federal and state governmental programs, that entitles Members to receive specific Services through Health Share.

“**Practitioners**” has the meaning given to that term in Section 2.2 of this Agreement.

“**Records**” has the meaning given to that term in Section 2.11 of this Agreement.

**ARTICLE II**  
**OBLIGATIONS AND REPRESENTATIONS OF COUNTY**

**2.1 Services.**

**2.1.1** County will accept Members as patients (as that term may apply) and will provide to Members services in accordance with the terms and conditions of this Agreement including without limitation all statements of work that the parties may enter into from time to time by mutual agreement (such services, the “Services,” and each such statement of work, a “SOW”), attached to this Agreement as **Exhibits A, B, C, and D.**

**2.1.2** County shall provide Services to Members in accordance with Exhibit B, Part 2, Section 1 of the Core Contract.

**2.1.3** County shall not deny or reduce the amount, duration or scope of a Service solely because of the diagnosis, type of illness, or condition, subject to the Prioritized List of Health Services.

**2.1.4** County will provide Services to Members in an amount, duration and scope that is not less than the amount, duration and scope for the same services provided by County to other individuals who receive services equivalent to Services.

**2.1.5** County will ensure that Services rendered by County are within the scope of, and in accord with, as applicable, the County’s and Practitioner’s license and certifications, and meet the community professional standards relevant to the services provided.

**2.1.6** County shall not require Members to obtain prior approval or a referral from a Primary Care Physician in order to gain access to: (i) Behavioral Health assessment and evaluation services; or (ii) services rendered by Traditional Health Workers.

**2.1.7** County acknowledges that the rights of Members to receive particular services is governed by the terms of the relevant Plan covering the Members. This Agreement is a standalone agreement only for those services described in this Agreement, and does not supersede or affect County’s other contracts for services outside the scope of this Agreement.

**2.2 Practitioners.** County will ensure that all of County’s employed and contracted providers who provide Services to Members (the “Practitioners”) under this Agreement:

**2.2.1** Comply with all of the terms and conditions of this Agreement (unless the context requires otherwise);

**2.2.2** If licensed, are credentialed by County prior to providing services to Members and meet Health Share's credentialing and recredentialing requirements, as applicable, and if non-licensed, have received appropriate training and supervision for the work; and

**2.2.3** Comply with all requests for information from Health Share related to Practitioners' qualifications. County will not bill for or be entitled to receive any compensation for providing any services that are inconsistent with this Agreement or, if applicable, the privileges granted to a particular Practitioner. County will be solely responsible for payment of all wages, salary, compensation, payroll and withholding taxes, unemployment insurance, workers' compensation coverage and all other compensation, insurance and benefits with respect to Practitioners.

**2.3 Hours of Operation.** County will arrange for provision of Services during its normal business hours that are not less than the hours of operation offered to County's other patients.

**2.4 Equipment and Supplies.** At County's own cost and expense, County will supply the required personnel, equipment, instruments and supplies required to perform the Services. County will ensure that all equipment, including without limitation medical equipment, used by County in rendering Services: (i) meets the community standards as the appropriate equipment to be used for the services provided, (ii) is in good working order, (iii) is maintained in accord with the equipment manufacturer's schedule for service and maintenance, and (iv) is utilized or operated only by individuals or technicians with appropriate training and qualifications to operate such equipment. County will not bill for or be entitled to receive any compensation for providing any services if the County's use of the equipment does not meet the requirements of this Section 2.4.

**2.5 Administration of Agreement.** County agrees to perform its duties and obligations under this Agreement in coordination and collaboration with Health Share and Health Share Partners, and in accordance with the terms and conditions of this Agreement, and the Health Share policies and procedures set forth in Exhibit E to this Agreement, as the same may be updated, amended, modified or supplemented from time to time, and provided further that: (i) if there are any conflicts between this Agreement and the policies and procedures, this Agreement shall control; and (ii) the policies and procedures are applicable only to the extent applicable to the Services provided by County hereunder. An amendment to this Agreement shall be required before Health Share can obligate County to the terms and conditions of any policies and procedures not then-listed in Exhibit E.

**2.5.1** County shall also perform its duties and obligations under this



Agreement in accordance with Applicable Laws, as they may be adopted, amended or repealed from time to time, including but not limited to the following: (i) ORS Chapter 659A.142; (ii) OHA rules pertaining to the provision of prepaid capitated health care and services, OAR Chapter 410, Division 141; (iii) all other OHA Rules in OAR Chapter 410; (iv) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations; (v) Title VI and VII of the Civil Rights Act of 1964, as amended; (vi) 45 CFR Part 84 which implements Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (vii) the Americans with Disabilities Act of 1990, as amended; (viii) Executive Order 11246, as amended; (ix) the Health Insurance Portability and Accountability Act of 1996, as amended; (x) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (xi) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (xii) all regulations and administrative rules established pursuant to the foregoing laws; (xiii) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations; (xiv) section 1557 of the Affordable Care Act; and (xv) all federal law governing operation of CMHPs, including without limitation, all federal laws requiring reporting of Client abuse.

**2.6 Reporting Responsibilities.** County agrees to promptly provide any reports, information, or documents reasonably requested by Health Share in the form and format requested by Health Share. Such reports may include without limitation, reports regarding utilization, performance measures, quality metrics, Member satisfaction, coordination, expenses and savings, and other information as Health Share may require to fulfill its reporting responsibilities under the Core Contract, including, but not limited to, Health Share's reporting requirements under Exhibits L and M of the Core Contract. County represents and warrants that any reports and data provided pursuant to this Section 2.6 will be accurate and complete.

**2.7 Qualifications.** At all times during the term of this Agreement, County will meet each of the following qualifications ("County Qualifications") and ensure that all Practitioners meet those qualifications, as applicable:

**2.7.1** Has and maintains in good standing all required or appropriate state and federal licenses, permits, registrations, certifications, approvals and authorizations if applicable, to provide Services under this Agreement consistent with state licensure requirements, Medicaid certification and other professional qualifications as applicable. County will furnish evidence of the same to Health Share on request;

**2.7.2** Has never been, and is not currently, suspended, debarred, or excluded from any federal or state funded health care program or from participating in any government procurement or non-procurement contract;

**2.7.3** County will comply, as applicable, with Health Share's credentialing or recredentialing criteria then in effect. County will promptly provide information required by Health Share to conduct credentialing or recredentialing.

**2.7.4** If compliance with any provision of this Agreement would result in the County's or Practitioner's loss of license, County agrees to notify Health Share within thirty (30) days of discovery of such conflict. County will promptly notify Health Share of any action against County's or any Practitioner's professional license to practice, including but not limited to suspension, revocation or probation. County will also promptly notify Health Share if County or a Practitioner is convicted of a felony or expelled or suspended from the Medicaid program.

**2.8 Representations and Warranties.** County represents and warrants to Health Share the following, which warranties are in addition to, and not in lieu of, any other warranties provided herein:

**2.8.1** County has the power and authority to enter into and perform the obligations described in this Agreement.

**2.8.2** This Agreement, when executed and delivered, will be a valid and binding obligation of County enforceable in accordance with the Agreement's terms.

**2.8.3** County has the skill and knowledge possessed by well-informed members of County's industry, trade or profession, as applicable, and County will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in County's industry, trade or profession, as applicable.

**2.8.4** County will, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed, if applicable, to perform the Services.

**2.8.5** The Services will be in conformity in all respects with the requirements or specifications stated in this Agreement and the applicable SOW.

**2.8.6** All Services provided or arranged by County shall be provided or arranged by duly licensed, certified or otherwise authorized professional personnel in accordance with (i) the generally accepted medical, dental and/or surgical practices and standards prevailing in the applicable professional community at the time of treatment, (ii) the provisions of Health Share's quality initiative described in Exhibit B, Part 10 of the Core Contract, and (iii) the requirements of Applicable Laws.

**2.8.7** Each of County's Practitioners shall maintain in good standing at all times during the term of this Agreement the necessary licenses or certifications required by Applicable Laws to provide or arrange Services hereunder.

**2.8.8** County shall provide Medically Appropriate services that County is obligated to provide, under Applicable Laws or under this Agreement, to a Member covered under this Agreement.

**2.8.9** County shall not impose on Members premiums or charges that are in excess of the premiums or charges permitted under the Medical Assistance Program.

**2.8.10** County shall not commit acts to discriminate among Members on the basis of their health status or need for health care services.

**2.8.11** County shall not misrepresent or falsify any information that it furnishes to CMS, the State of Oregon, OHA, or Health Share, including but not limited any certification, any report required to be submitted under this Agreement, encounter data or other information relating to care or services provided to a Member.

**2.8.12** County shall not misrepresent or falsify information that it furnishes to a Member, Potential Member, or Practitioner.

**2.8.13** County shall follow the accounting principles and accounting standards required by Applicable Laws, or this Agreement.

**2.9 External Quality Review; Access to Records and Facilities.** County will cooperate by providing access to records, and if applicable, facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, Services provided under this Agreement. If copies of such records are required, County will provide those copies at no charge. County will provide timely access to records, and, if applicable, facilities, and cooperate with Health Share in the collection of information through consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with this Agreement, including but not limited to verification of services actually provided, and for developing and monitoring performance and outcomes. County and Health Share agree to cooperate to ensure that the confidentiality restrictions in 42 C.F.R. Part 2-Confidentiality of Alcohol and Drug Abuse Patient Records, as may be amended from time to time ("42 C.F.R. Part 2"), are complied with prior to any review. The requirements described in this Section 2.9 will survive termination of the Agreement.

**2.10 Medical Records.** County will develop and maintain a record keeping system that includes without limitation medical records, if applicable, that:

**2.10.1** Includes sufficient detail and clarity to permit internal and external review to validate encounter submissions and to assure Medically Necessary services are provided consistent with the documented needs of the Member;

**2.10.2** Conforms to accepted professional practice; and

**2.10.3** Allows Health Share to ensure that data received from County is accurate and complete by: (i) verifying the accuracy and timeliness of reported data; (ii) screening the data for completeness, logic, and consistency; and (iii) collecting service information in standardized formats to the extent feasible and appropriate.

## **2.11 Record Retention.**

**2.11.1** County will retain, and will cause County's personnel to retain, clinical records for the longer of ten (10) years after the date of service for which claims are made, or for the period required by Applicable Laws. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the retention period, County will retain, and will cause County's personnel to retain, the clinical records until all issues arising out of the action are resolved.

**2.11.2** County will maintain all financial records related to this Agreement in accordance with generally accepted accounting principles. In addition, County will maintain any other records, books, documents, papers, plans, records of shipment and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "**Records.**" County acknowledges and agrees that Oregon Health Authority, the Secretary of State's Office, CMS, the Comptroller General of the United States, the Oregon Department of Justice Medicaid Fraud Control Unit and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. County will retain and keep accessible all Records for the longer of: (i) ten (10) years following final payment and termination of this Agreement; (ii) the retention period specified in this Agreement for certain kinds of records; (iii) the period required by Applicable Laws, including the records retention schedules set forth in OAR Chapters 410 and 166; or (iv) until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

**2.12 Subrogation.** County agrees to subrogate to Health Share and OHA any and all claims related to County's provision of Services hereunder that County has or may have against any entity or individual that directly or indirectly receives funds under this Agreement, but only to the extent Health Share and OHA have incurred damages. If the

County also incurs damages, then this provision shall not prevent the County from pursuing its own claims.

**2.13 Non-Covered Services.** County will advise a Member of any service, treatment, or test that is recommended as Medically Appropriate for the Member in accord with the community standards of the medical profession, even if the service, treatment, or test is not covered under the Plan. This Agreement, and the fact of whether the Plan happens to provide coverage of any particular service, treatment or test, does not alter a County's duty to exercise professional skill and judgment in accord with the prevailing community standards applicable to County in advising and treating Members relative to that service, treatment, or test. County acknowledges that this Agreement may not be interpreted to require County to deny care to a Member for services that are not covered under the Plan. Neither County nor a Practitioner shall bill a Member for Non-Covered Services unless the County or the Practitioner, as applicable, has complied with the requirements set forth in OAR 410-120-1280(3)(h) prior to providing any of the Non-Covered Services.

**2.14 Compliance with Health Care Programs.** County and County's Practitioners agree to cooperate with the Medical Directors of Health Share in the Medical Directors' review of, and in the establishment of programs, policies and procedures to, improve the quality of care delivered to Members.

**2.15 Oregon Health Plan Addendum.** The terms and conditions set forth in the Oregon Health Plan Addendum (**Exhibit G**) are incorporated and made a part of this Agreement.

**2.16 Liaison.** County will designate a liaison who will be responsible for meeting with a Health Share designee to discuss, on a regular basis, as scheduled by Health Share, County's performance under this Agreement.

**2.17 Compliance with O.R.S. § 414.153.** Nothing in this Agreement shall be interpreted as prohibiting Health Share or Health Share Partners from contracting with other public or private providers for mental health or chemical dependency services.

**2.18 Core Contract.** This Agreement is subject to the terms and conditions of the Core Contract. In the event that any provision, clause or application of this Agreement is ambiguous with respect to the delegation of Core Contract provisions by Health Share to County due to drafting, technical or similar issues, the parties shall interpret this Agreement in a manner consistent with the original intention of the parties, to allow Health Share to delegate as many duties and obligations related to providing Services to Members under the SOWs to County.

### ARTICLE III COMPENSATION

**3.1 Compensation.** In consideration of all the work to be performed under this Agreement, Health Share shall pay County a fixed monthly payment per the schedule outlined in **Exhibit F**. Such payment will be made via electronic funds transfer and shall be paid once monthly on a date agreed on by Health Share and County. Payment will be reassessed at two intervals, for the periods January 1, 2021 to June 30, 2021 and July 1, 2021 to December 31, 2021. Total payments made during an interval will be divided by average membership in the service area and then multiplied by the average number of Health Share members during the interval. The recalculated amount will be compared to what was paid during the interval and any difference will be deducted from payments made to County. Those adjustments will be applied in a lump sum against the amount due to County in August 2021 and February 2022, respectively.

**3.2 Funds Available.** County understands and agrees that Health Share's payment for work performed under this Agreement is contingent on OHA receiving appropriations, limitations, allotments, or other expenditure authority sufficient to allow OHA, in the exercise of its reasonable discretion, to continue to make payments to Health Share under the Core Contract. As a result, County's payment hereunder from Health Share is contingent upon OHA making anticipated payments to Health Share.

**3.3 Recovery of Overpayments or Other Amounts Owed by County.** Health Share shall have the right to audit County and recoup any payments made to County or offset against amounts owed by Health Share to County. Health Share and County shall mutually agree upon the amount to be recouped or offset.

### ARTICLE IV RELATIONSHIP OF THE PARTIES

**4.1 Independent Parties.** The parties to this Agreement are independent parties, and nothing in this Agreement will be construed or be deemed to create between them any relationship of principal and agent, partnership, joint venture, or any relationship other than that of independent parties. No party to this Agreement, nor the respective agents or employees of either party, will be required to assume or bear any responsibility for the acts or omissions, or any consequences thereof of the other party under this Agreement. No party to this Agreement, nor the respective agents or employees of either party, will be liable to other persons for any act or omission of the other party in performance of their respective responsibilities under this Agreement.

**4.2 Tax Obligations.** County will be responsible for appropriate management of all federal and state obligations applicable to compensation or payments paid to County under this Agreement.

**4.3 Board Membership and Development of Health Share Policies and Procedures.** A County representative serves on Health Share's board of directors. Through *Amended and Restated County-Based Services Agreement between Health Share and Clackamas County effective January 1, 2021*

such representation, and given Health Share's practice of requiring board committee and board review (in matters relating to governance, finance and delegated responsibilities) of Health Share policies and procedures, County will have input in the development of and amendments to policies and procedures that could affect County's provision of Services hereunder.

## **ARTICLE V TERM AND TERMINATION**

**5.1 Term of Agreement.** When executed by both parties, this Agreement will become effective as of the Effective Date and will continue in effect for one (1) year from that date unless otherwise terminated pursuant to this Agreement. Both parties agree to reassess the terms of this agreement not less than three (3) months before the end of the term and determine whether the parties desire to renew the Agreement for an additional term.

**5.2 Termination on Default.** In the event Health Share or County should materially default in the performance of any obligation imposed by this Agreement, the non-defaulting party may elect to provide the defaulting party with written notice describing the facts and circumstances of the default. After providing such notice, the non-defaulting party may elect, by written notice to the defaulting party, to terminate this Agreement or any SOW, in whole or in part, if the defaulting party has not cured any default within thirty (30) days following the defaulting party's receipt of the applicable default notice; provided, however that with respect to any default covered by this subsection which reasonably requires additional time to cure, such failure will not result in a termination of the Agreement so long as the defaulting party has commenced performance of a cure within the stated cure period and diligently pursues such cure to completion.

**5.3 Immediate Termination by Health Share.** Notwithstanding any other term in this Agreement to the contrary, Health Share may immediately terminate this Agreement or any SOW, in whole or in part, or the participation of any individual health care provider providing services for County pursuant to this Agreement on delivery of written notice to County if any of the following occurs:

**5.3.1** County does not fully meet all County Qualifications set forth in Section 2.7 of this Agreement;

**5.3.2** County fails to screen Practitioners or contracted, employed, leased, owned or controlled personnel providing or assisting in the provision of Services and confirm none are excluded, debarred, suspended or declared ineligible to participate in any federal health care program, or in any federal procurement or non-procurement program, and an excluded Practitioner or an excluded contracted, employed, leased, owned or controlled personnel provides or assists in the provision of Services hereunder;

**5.3.3** County receives a felony conviction related to the provision of Services hereunder.

**5.3.4** The dissolution or reorganization of County.

**5.3.5** If County: (i) voluntarily files a petition in or for bankruptcy or reorganization; (ii) makes a general assignment or another arrangement for the benefit of creditors; (iii) is adjudged bankrupt; (iv) has a trustee, receiver or other custodian appointed on its behalf; or (v) has any other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding commenced against it.

**5.3.6** County fails or refuses to provide or arrange for the provision of Services to Members in a manner consistent with professional community standards, provided however that Health Share shall not have the right to immediately terminate the Agreement under this Section 5.3.6 if this Section 5.3.6 is implicated only because a malpractice or negligence claim has been filed against Practitioner and/or Practitioner has been found liable for malpractice or negligence.

**5.3.7** Professional liability or other liability insurance covering County, as required by this Agreement, is terminated without replacement coverage being obtained in amounts required by this Agreement.

**5.3.8** County's knowing or deliberate submission of false or misleading billing information to Health Share or any Health Share Partner.

**5.3.9** Health Share or OHA determines County is in violation of or has failed to comply with any of the requirements of this Agreement and County is unable to cure such violation or noncompliance through a Corrective Action Plan, as provided for in Section 9.3.3.j of this Agreement, or another corrective action.

**5.4 Termination without Cause.** The parties agree that they are contracting at will. Either Health Share or County may terminate this Agreement or any SOW, in whole or in part, without cause upon ninety (90) days' advance written notice to the other party. However, such termination will not relieve either party of any contractual obligation(s) incurred prior to the Effective Date of the termination.

**5.5 Change in Law.** In the event Applicable Laws are enacted, or state or federal regulations are promulgated which, in the opinion of Health Share, make this Agreement or any SOW illegal under such Applicable Laws, or this Agreement or any SOW is otherwise deemed by appropriate state or federal governmental authorities to violate such Applicable Laws, this Agreement and/or any SOW will immediately be amended to comply with such Applicable Laws or be terminated.



**5.6 Continuity of Care.** In the event of termination of this Agreement or any SOW, in whole or in part, the following provisions will apply to ensure continuity of the Services to Members. County will ensure:

**5.6.1** Continuation of Services to Member for the period during which Health Share has paid Compensation to County, including inpatient admissions up until discharge;

**5.6.2** Orderly and reasonable transfer of Member care in progress, whether or not those Members are hospitalized;

**5.6.3** Coordination and cooperation with Health Share, Health Share Partners, and OHA, as applicable;

**5.6.4** Timely submission of information, reports and records, including encounter data, required to be provided to Health Share and Health Share Partners during the term of this Agreement or the SOW;

**5.6.5** Timely payment of valid claims for services to Members for dates of service included within the term of the Agreement or the SOW; and

**5.6.6** If County continues to provide services to a Member after the date of termination of this Agreement or any SOW, Health Share will have no responsibility to (i) pay for such services unless otherwise agreed to by Health Share to allow for an orderly and reasonable transfer of Member care in process; (ii) notify Members of the termination of this Agreement or the SOW; or (iii) direct Members to other health care providers.

## **ARTICLE VI INDEMNIFICATION**

**6.1 Indemnification by Health Share.** Health Share shall defend, indemnify and hold harmless County, County Commissioners, and County directors, officers, employees, affiliates and agents from and against all claims, suits, actions, losses, damages, liabilities, settlements, costs and expenses of any nature whatsoever (including reasonable attorneys' fees and expenses at trial, at mediation, on appeal, and in connection with any petition for review) resulting from, arising out of, or relating to the acts or omissions of Health Share or its officers, employees, subcontractors, agents, insurers, and attorneys (or any combination of them) in Health Share's performance pursuant to this Agreement.

**6.2 Indemnification by County.** To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by Oregon Tort Claims Act, County shall defend, indemnify and hold harmless Health Share and its directors, officers, employees, affiliates and agents from and against all claims, suits, actions, losses, damages, liabilities, settlements, costs and expenses of any nature whatsoever (including reasonable attorneys'

fees and expenses at trial, at mediation, on appeal, and in connection with any petition for review) resulting from, arising out of, or relating to the activities of County or its officers, employees, subcontractors, agents, insurers, and attorneys (or any combination of them) under this Agreement.

## **ARTICLE VII INSURANCE**

**7.1 Insurance.** County will procure and maintain, at County's sole expense, and keep in force, at least the types and amounts of insurance coverage as set forth in Exhibit F of the Core Contract. County will make available to Health Share evidence of insurance coverage required under this Section 7.1, as Health Share may request from time to time. County will provide Health Share at least fifteen (15) days' advance written notice of revocation, suspension, reduction, limitation, probationary or other disciplinary action taken on any of County's required insurance coverage. County shall also obtain and maintain privacy and network security coverage providing protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limits of at least \$3 million. If County has not already acquired such privacy and network security coverage meeting all of the previously mentioned requirements at the time this Agreement is executed, County shall procure such coverage in a reasonable amount of time after execution and as mutually agreed by Health Share. Proof of self insurance for the required types and amounts of coverage satisfies this section.

**7.2 Claims, Incidents, Suits and Disciplinary Actions.** County agrees to promptly report to Health Share any claim made, suit filed or disciplinary action commenced against County or County's personnel relating to the provision of Services under this Agreement.

## **ARTICLE VIII DISPUTES AND COMPLAINTS**

**8.1 Arbitration.** Except as otherwise provided in Section 8.2 of this Agreement, any dispute, controversy, or claim arising out of the subject matter of this Agreement will be settled by arbitration before a single arbitrator in Portland, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business and healthcare law. The arbitration will be initiated by filing a claim with Arbitration Service of Portland and will be conducted in accordance with the then-current rules of Arbitration Service of Portland. The resolution of any dispute, controversy, or claim as determined by

the arbitrator will be binding on the parties. Judgment on the award of the arbitrator may be entered by any party in any court having jurisdiction.

**8.2 Compelling Arbitration.** A party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator's resolution of any dispute, controversy, or claim. Any such action, suit, or proceeding will be litigated in courts located in Multnomah County, Oregon. For the purposes of the preceding sentence, each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon. If a claim must be brought in a federal forum, then it will be conducted solely and exclusively within the United States District Court for the District of Oregon.

**8.3 Governing Law; Consent to Jurisdiction.** County agrees that this Agreement shall be governed, and that County shall consent to legal jurisdiction, in accordance with Exhibit D, Section 1 of the Core Contract, which shall be incorporated herein by reference, except that any claim that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the County where the claim arises or relates.

## **ARTICLE IX GENERAL PROVISIONS**

### **9.1 Amendments.**

**9.1.1 Mutual Amendment.** The terms of this Agreement may be amended from time to time in a writing signed by Health Share and County.

**9.1.2 Amendments Required by Law.** Health Share may modify this Agreement immediately to comply with changes in Applicable Laws, as described in Section 5.5 of this Agreement. While Health Share will strive to give advance notice of such amendment(s) to County, advance notice by Health Share may not be possible if Health Share is required to immediately amend this Agreement to comply with changes in Applicable Laws.

### **9.2 Notices and Communications between the Parties.**

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

- (a) All notices for termination of this Agreement; and
- (b) All requests for mediation and/or arbitration.

**9.2.2 All Other Notices and Communications.** All other notices and communications between the parties which are necessary for the proper administration of this Agreement (including notices required within this Agreement which are not included in Section 9.2.1 above) may be communicated via regular U.S. mail, facsimile or electronic mail.

**9.2.3 Confidential and Protected Health Information.** If a notice or communication includes information which is confidential or proprietary to either or both parties and/or which includes “protected health information,” as defined for purposes of HIPAA (“PHI”), then the following restrictions must be observed when communicating such information:

- (a) U.S. Mail/Certified Mail/Overnight Delivery: no additional requirements.
- (b) Facsimile Transmission: The information must be prefaced by a formal cover sheet noting the confidentiality of such information.
- (c) Web Site: Not a permitted method of notice or communication for confidential information and PHI, unless the Web Site is secure or the information appropriately encrypted.
- (d) Electronic Mail: Not a permitted method of notice or communication for confidential information and PHI, unless the electronic mail is secured or the information is appropriately encrypted.

**9.2.4 Address for Notices.** Notices to County will be sent to: (i) the facsimile or postal address of County’s billing service location or any other revised postal address or facsimile provided by County to Health Share in writing; or (ii) the electronic mail address designated by County for electronic notices. Notices to Health Share will be sent to:

Health Share of Oregon  
2121 SW Broadway, Suite 200  
Portland, Oregon 97201  
Attention: Integration Department

Or any revised address provided to County in writing. The facsimile, postal address or electronic mail address for notice may be changed on prior written notice to the other party.

**9.2.5 When Made.** For notices and communications described under Sections 9.2.1 and 9.2.2 above, the notice or communication will be deemed to have been made on the date the receiving party confirmed receipt of the notice or communication.

**9.3 Assignment of Contract, Successors in Interest, Subcontractor.**

**9.3.1** Health Share may assign or transfer Health Share’s interest in this Agreement without prior consent of County.

**9.3.2** County will not assign or transfer County’s interest in this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner, without prior written consent of Health Share. Any such assignment or transfer, if approved, is subject to such conditions and provisions as Health Share may deem necessary. No approval by Health Share of any assignment or transfer of interest will be deemed to create any obligation of Health Share in addition to those set forth in this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

**9.3.3** If County subcontracts any or all of the work to be performed under this Agreement, County shall subcontract in accordance with the standards applicable to “Contractor” in Exhibit B, Part 4, Sections 12.a.1 through 12.a.7, and 12.a.10 – 12.a.12 of the Core Contract. Further:

- (a) To the extent Health Share has delegated services and obligations under the Core Contract to County in this Agreement, County agrees to perform the services and meet the obligations and terms and conditions of the Core Contract as if County is Health Share.
- (b) County shall enter into a business associate agreement with Health Share when required under, and in accordance with, HIPAA.
- (c) County shall cooperate with Health Share’s performance of readiness review evaluations of County, as described in Exhibit B, Part 4, Section 12.a.4 of the Core Contract.
- (d) County shall cooperate with Health Share’s performance of exclusion screening and criminal background checks, as described in Exhibit B, Part 4, Sections 12.a.5 and 12.a.6 of the Core Contract.
- (e) If deficiencies are identified in County performance, whether those deficiencies are identified by Health Share, by OHA, or their designees, County shall be required to respond to and remedy those deficiencies within the timeframe set by OHA or a reasonable timeframe set by Health Share, provided however that Health Share shall not be required

to set a reasonable timeframe if the timeframe set by OHA is unreasonable. If, in Health Share's discretion, the timeframe set by OHA is unreasonable, Health Share will undertake reasonable efforts to negotiate the timeframe.

- (f) County shall not bill Members for services that are not covered under the Core Contract unless there is a full written disclosure or waiver (also referred to as an agreement to pay) on file, signed by the Member, in advance of the service being provided, in accordance with OAR 410-141-3565.
- (g) County shall oversee and be responsible for the satisfactory performance of any services that are Covered Services it has delegated to a subcontractor. County shall require subcontractors to perform services under subcontracts in accordance with the requirements of the Core Contract.
- (h) County shall support and assist Health Share in the development and reporting of its Annual Subcontractor Performance Report, as described in Exhibit B, Part 4, Sections 12.a.13 – 12.a.15 of the Core Contract.
- (i) In the event OHA or Health Share identifies deficiencies or areas of improvement in County's performance, Health Share and County will work together to develop a Corrective Action Plan to remedy such deficiencies. County shall implement the agreed-upon Corrective Action Plan and cooperate with Health Share in implementing it within a reasonable timeframe set by Health Share, provided however that Health Share shall not be required to set a reasonable timeframe if the timeframe set by OHA for implementation is unreasonable. If, in Health Share's discretion, the timeframe set by OHA is unreasonable, Health Share will undertake reasonable efforts to negotiate the timeframe. County shall further support and assist Health Share in its obligations to report on the Corrective Action Plan to OHA, as described in Exhibit B, Part 4, Sections 12.a.16 and 12.a.17 of the Core Contract.

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

**9.5 Entire Agreement; Amendments.** This Agreement, together with all exhibits and Statements of Work, constitutes the sole and entire agreement of the parties to

this Agreement with respect to the subject matter contained herein, and replaces and supersedes all prior understandings and agreements, both written and oral, with respect to such subject matter. This Agreement may only be amended pursuant to the provisions described in Section 9.1 of this Agreement.

**9.6 Confidential Business Information.** Except as otherwise required by Applicable Laws, County agrees not to disclose to any third party any Confidential Information, as defined in this Section 9.6, that is disclosed to County as a result of County's participation in this Agreement. "**Confidential Information**" will mean all information provided by one party to this Agreement to another in connection with this Agreement, which is designated "confidential" and/or considered a trade secret under Applicable Laws. Each party agrees that it will not make use of, disseminate, disclose or in any way circulate any Confidential Information supplied to or obtained by such party in writing, orally or by observation, except as expressly permitted by this Agreement or as required by Applicable Laws or order of a court or administrative agency having jurisdiction. Confidential Information may be used as necessary to perform the services required under this Agreement and may be disclosed by a party to this Agreement to its own employees that require access to such Confidential Information for the purposes of this Agreement. This paragraph does not prevent disclosure in connection with an auditor survey in the normal course of business by regulatory authorities, certified public accountants, accrediting institutions and the like; provided the recipient is under a duty to protect the confidentiality of the information disclosed.

**9.7 Waiver.** The waiver of any provision of this Agreement will only be effective if set forth in writing and signed by the waiving party. Any such or other waiver will not operate as, or be deemed to be, a continuing waiver of the same or of any other provision of this Agreement.

**9.8 Third-Party Rights.** The parties do not intend the benefits of this Agreement to inure to any third person not a signatory to this Agreement. The Agreement will not be construed as creating any right, claim, or cause of action against any party by any person or entity not a party to this Agreement except as otherwise described in this Agreement.

**9.9 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all counterparts together will constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of the Agreement.

The foregoing terms are agreed to by the parties.

**Health Share of Oregon**

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

Name: James Schroeder \_\_\_\_\_

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

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

**Clackamas County**

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

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

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

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



## EXHIBIT A

### COMMUNITY HEALTH ASSESSMENT AND COMMUNITY HEALTH IMPROVEMENT PLAN ALIGNMENT AND IMPLEMENTATION STATEMENT OF WORK

This Statement of Work (“SOW”), effective as of January 1, 2021 (the “SOW Effective Date”), is made pursuant to, and incorporates by reference, the County-Based Services Agreement effective January 1, 2021 (the “Agreement”) between Health Share of Oregon, an Oregon nonprofit corporation (“Health Share”), and Clackamas County (“County”).

**Services.** County will collaborate with Health Share in Health Share’s development of: (a) a Community Health Assessment (CHA) through participation in the Healthy Columbia Willamette Collaborative and as described in Exhibit K, Section 6 of the Core Contract; and (ii) a Community Health Improvement Plan (CHIP) for the implementation of health activities in accordance with OAR 410-141-3730 and as described in Exhibit K, Section 7 of the Core Contract.

Payment that County receives for the above-described services shall be used to support implementation of CHIP activities for local and regional CHIP priorities. Funds will be allocated to support CHIP projects identified by the strategic CHIP workgroups that may include grants, pre-identified CHIP strategies, CHIP planning, and CHIP community engagement initiatives.

**Benchmarks.** Health Share and County will mutually agree on any performance benchmarks required by Health Share. County agrees to provide annual progress reports relevant to CHA and CHIP alignment and implementation, in the form and format requested by Health Share. Those reports will include information on outcomes from funded community grants and identified priority projects.

## EXHIBIT B

### TOBACCO PREVENTION AND CESSATION STATEMENT OF WORK

This Statement of Work (“SOW”), effective as of January 1, 2021 (the “SOW Effective Date”), is made pursuant to, and incorporates by reference, the County-Based Services Agreement effective January 1, 2021 (the “Agreement”) between Health Share of Oregon, an Oregon nonprofit corporation (“Health Share”), and Clackamas County (“County”).

**Services.** County will lead Health Share and Multnomah and Washington Counties in implementation of a closed loop e-referral for tobacco cessation within the EPIC electronic health record (EHR) used by Federally Qualified Health Centers (FQHCs) in the region (Clackamas, Multnomah and Washington Counties). County will facilitate training of the closed loop e-referral with providers and support staff in the regions’ FQHCs.

**Benchmarks.** County shall report on the following service benchmarks:

1. Progress on implementation of e-referral in EPIC EHR
2. Number of e-referrals made

## EXHIBIT C

### REGIONAL PERINATAL CONTINUUM OF CARE STATEMENT OF WORK

This Statement of Work (“SOW”), effective as of January 1, 2021 (the “SOW Effective Date”), is made pursuant to, and incorporates by reference, the County-Based Services Agreement effective January 1, 2021 (the “Agreement”) between Health Share of Oregon, an Oregon nonprofit corporation (“Health Share”), and Clackamas County (“County”).

**Purpose.** Health care investment in a perinatal continuum of care infrastructure and county-based services to families supports the healthy development of families and young children within our communities. Public Health prevention services—including evidence-based home visiting and WIC programs—address social, emotional and educational determinants of health, physical health and development and social-emotional well-being. Prevention services decrease the use of emergency medical services, decrease child abuse and incarceration rates, increase family self-sufficiency, increase graduation and employment rates, reduce risk factors that lead to chronic conditions, increase immunization rates, improve utilization of a medical home, and result in savings in health care costs. County-based services provide education, physical and behavioral health screenings, parent support, early identification of problems and service referrals to improve maternal, family, and community health outcomes. With an emphasis on supporting individuals and communities most impacted by racial health inequities, services are prioritized to those at highest risk for poor health outcomes, including low-income families, first-time families, and families with children who have special health needs.

**Services.** County shall undertake the following services related to the perinatal continuum of care:

1. **Perinatal Prevention Systems Coordination and Planning.** Complete a community alignment assessment to establish a local plan for a regional system for coordinated perinatal prevention services and a nurse home visiting strategic plan.
  - a. Community alignment assessment. County will collaborate with regional maternal, child and family community partners to:
    - i. Create a local system map of perinatal prevention services
    - ii. Engage stakeholders, including families accessing perinatal prevention services, to inform the development of a coordinated system.
    - iii. Align local strategies with existing tri-county efforts to expand Help Me Grow into a regional system for coordinated perinatal prevention services.
2. **Nurse Home Visiting.** County will make the Babies First! nurse home visiting program available to support high-risk pregnant women and infants.

3. **Women, Infant and Children (WIC) Services.** County will make available WIC services to provide breastfeeding and nutrition expertise and support. County will prioritize enrolling Medicaid eligible pregnant women.
4. **Immunization Safety Net Services.** County will support immunization safety net services, including vaccine outreach events and immunization services for individuals with no insurance or individuals assigned to a medical home that provides immunizations.

**Benchmarks.** County shall report on the following service benchmarks:

1. Perinatal Prevention System Coordinator and Planning
  - a. Perinatal Prevention Services Assessment, including a systems map, stakeholder engagement and local recommendations for a regional system for coordinated perinatal prevention services.
  - b. Nurse Home Visiting Strategic Plan
2. Nurse Home Visiting
  - a. Hire and train Community Health Nurse, Sr.
3. WIC Services
  - a. Number of prenatal WIC participants with Oregon Health Plan.
4. Immunization Assurance
  - a. Clackamas County immunization rates analysis (before and during COVID)
  - b. Number of guidance documents shared with Clackamas County Delegate Agencies (to assure immunization activities open back up)

## EXHIBIT D

### BEHAVIORAL HEALTH CRISIS AND SAFETY NET SERVICES STATEMENT OF WORK

#### Services.

1. **Crisis Services.** County will support and assist in Health Share's and Health Share Partners' establishing of a crisis management system, as described and in accordance with Exhibit M, Section 10 of the Core Contract. As part of these efforts to support and assist the crisis management system, County will provide the following crisis services to Members in County's service area experiencing a behavioral health condition where stabilization support is necessary:
  - a. Urgent walk-in centers, operated seven (7) days per week. These centers shall be available to individuals discharging from emergency departments in need of stabilization and unstable individuals interacting with law enforcement, among others.
  - b. 24/7 mobile crisis teams. County will provide qualified mental health professionals to respond in the community to individuals experiencing a mental health crisis.
  - c. 24/7 crisis lines. County will staff the crisis telephone lines with clinicians who will assist individuals experiencing a mental health crisis, and consult with and offer advice to professionals and family members and friends of persons experiencing a mental health crisis.
  - d. Peer services. County will make available to Members personnel with life experiences with mental health conditions and/or substance abuse to offer peer support and advice services. County shall deliver peer delivered services in accordance with Exhibit M, Section 9 of the Core Contract.
2. **Prevention and Promotion.** In connection with County's ASSIST program, County will train community members and health care providers in service area, including Practitioners, on suicide prevention and mental health awareness.
3. **Behavioral Health Plan.** County will collaborate with Health Share in Health Share's development of a Comprehensive Behavioral Health Plan, as described in Exhibit M, Section 12 of the Core Contract. County will also work with Health Share to coordinate Health Share's service delivery system with County's organized planning efforts, as described in Exhibit B, Part 4, Section 3.a.5 of the Core Contract.

4. **Liaison.** County’s behavioral health director or his or her delegate shall serve as a liaison to coordinate with Health Share on the delivery of Services under this Exhibit D.
  
5. **Coordination with Health Share Partner.** County understands that Health Share has delegated the management of Behavioral Health services to its Health Share Partner, specifically the Integrated Community Network (ICN). As such, County agrees to coordinate with ICN on the provision of Behavioral Health services, including the behavioral health crisis and safety net services. Such coordination includes providing any and all documentation necessary for ICN to oversee the provision of crisis and safety net services provided by County as described in this Exhibit D.
  
6. **Quarterly Reporting.** County agrees to submit quarterly reporting for each crisis program that receives funding from County pursuant to this Agreement. Reporting shall be submitted to Health Share within sixty (60) days of the end of each quarter, as indicated in the schedule below:

<b>Date Range</b>	<b>Report Due</b>
Jan 1, 2021-March 31, 2021	May 30 2021
April 1, 2021- June 30, 2021	August 30 2021
July 1, 2021-Sept 30, 2021	November 30 2021
Oct 1, 2021 – Dec 31, 2021	March 1, 2022

Reporting should include a brief narrative that summarizes the overall services to be funded, and individual crisis program reporting. Crisis services reporting may vary by program but should include:

- # total Individuals served
- # of total Health Share members served (when available)
- # of contacts, as defined by the program (ex: Calls, Outreach Attempts, Diversions etc)
- Pre-established outcome measures already used by the program (when available)
- Any summary demographic information already used by the program (ex: Race, Ethnicity, Zip Code, etc)

## **EXHIBIT E**

### **HEALTH SHARE POLICIES AND PROCEDURES**

County is obligated to the terms and conditions of all of the following Health Share policies and procedures:

1. COMM-01 Member Materials Review
2. COMM-02 Materials Co-Branding
3. CORP-02 Delegated Functions and Oversight
4. CORP-05 Delegated Entity Correction Action and Sanctions
5. CORP-09 Fraud, Waste and Abuse Prevention and Detection
6. OPS-01 Policy Development and Management
7. OPS-02 Management and Retention of Records
8. OPS-03 Recovery of Overpayments from Providers
9. OPS-04 Reporting of Overpayments Due to FWA
10. OPS-05 Excluded Individuals and Organizations
11. PCC-04 Provider Selection and Credentialing
12. QUAL-01 Grievance System Overview
13. QUAL-02 Member Rights
14. QUAL-03 Non-Discrimination
15. QUAL-04 Member Grievances
16. QUAL-06 Advance Directives and Declaration for Mental Health Treatment
17. QUAL-07 Transformation, Quality, and Performance Improvement
18. QUAL-10 Access to Care
19. QUAL-13 Mental Health and Addiction Parity
20. UM-07 Transition of Care

**EXHIBIT F  
PAYMENT SCHEDULE**

<b>County-Based Community Services: Clackamas County</b>	
<b>Investment Area</b>	<b>Amount</b>
<b><i>Behavioral Health</i></b>	
Crisis Services	\$1,785,816
24hr Crisis Line	\$95,064
Peer Contracts	\$1,021,768
Health Promotion	\$171,848
<b>Total Behavioral Health:</b>	<b>\$3,074,496</b>
<b><i>Public Health</i></b>	
CHP	\$200,000
Tobacco Cessation	\$120,000
Regional Perinatal Continuum of Care	\$370,443
<b>Total Public Health:</b>	<b>\$690,443</b>
<b>CY2021 Total Budget:</b>	<b>\$3,764,939</b>
<b>Monthly Allocation:</b>	<b>\$313,744.91</b>



## EXHIBIT G OHP ADDENDUM

The Core Contract requires certain additional provisions to be included in the agreement between Health Share and County. As such, County will comply with and cause any subcontractor of County to comply with, all of the provisions in this Oregon Health Plan (OHP) Addendum to the extent they are applicable to the services provided by County. If County subcontracts any functions of the Agreement, County will ensure that any subcontracts include all of the requirements set forth in this OHP Addendum. Capitalized terms used in this OHP Addendum that are not otherwise defined in this OHP Addendum or the Agreement have the meanings given to them in the Core Contract. Health Share may undertake any duties under this Addendum either directly or through Health Share's arrangement with a Plan Partner. Similarly, County will cooperate with and afford to any Plan Partner the same rights and obligations that the County owes to Health Share under the Agreement and the OHP Addendum. Therefore, references throughout this OHP Addendum to rights and obligations that County owes to Health Share should also be read to include an obligation to afford those same rights and obligations to a Plan Partner, unless the context suggests otherwise. References to "Medically Necessary" in the main body of the Agreement have the same meaning as "Medically Appropriate," as that term is defined under the statutes and regulations implementing the Oregon Health Plan.

- 1. General Commitment to Comply with Terms of Core Contract.** County has been given a copy of the Core Contract. County agrees to comply with all requirements, terms, conditions, commitments, responsibilities, and obligations applicable to a "Subcontractor" or a "Participating Provider," as those terms are defined and applied in the Core Contract, to the extent they are applicable to the services provided by County under this Agreement.
- 2. Continuum of Care.** County shall participate in activities to develop, support and promote Health Share's efforts to support a Continuum of Care that integrates Behavioral Health, Oral Health, and physical health interventions seamlessly and holistically. County shall support and assist Health Share in activities supporting the Continuum of Care that integrate health services by means of the activities set forth in Exhibit B, Part 4, Sections 1.b.1 through 1.b.6 of the Core Contract.
- 3. Prepaid Managed Care Health Services.** County shall coordinate the services that County furnishes its Members with the services the Member receives from any other prepaid managed care health services organization to avoid duplication of services as required by 42 C.F.R. § 438.208(b)(2) and (5).
- 4. Care Coordination.** County shall support and assist Health Share, as requested by Health Share, in meeting its care coordination obligations under Exhibit B, Part 4, Section 8 of the Core Contract.

5. **Access to Records and Facilities.** County must maintain its records and allow access to all records, documents, information, systems and facilities in accordance with Exhibit D, Section 15 of the Core Contract.
6. **No Billing for Non-Covered Services.** County will not bill Members for services that are not covered under the Core Contract unless there is a full written disclosure or waiver on file signed by the Member, in advance of the service being provided, in accordance with OAR 410-120-1280.
7. **Readiness and Ability to Perform Services.** County shall cooperate and assist with Health Share's evaluation and documentation of County's readiness and ability to perform the services hereunder.
8. **Audit by OHA.** County will provide timely access to records and facilities and cooperate with OHA Health Share in collection of information through consumer surveys, onsite reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other information for the purposes of monitoring compliance with the Core Contract, including but not limited to verification of services actually provided, compliance with medical and other records security and retention policies and procedures, and for developing and monitoring performance and outcomes.
9. **Performance Monitoring.** County will cooperate with Health Share's policies, procedures, and actions, and will comply, as requested, with a Health Share request for information, documentation, reporting and access that permit Health Share to monitor County's performance on an ongoing basis and, as necessary, to perform a formal review of County's compliance with delegated responsibilities and performance, and to identify any deficiencies or areas for improvement, in accordance with 42 CFR 438.230. On identification of deficiencies or areas for improvement, County will be required to develop and implement a time specific plan for the correction of identified areas of noncompliance or substandard performance.
10. **Revocation of the Delegation of Activities or Obligations.** Health Share may revoke the delegation of activities or obligations and pursue the remedies contemplated by this Agreement in instances where OHA or Health Share has determined County has breached the terms of this Agreement.
11. **Federal Managed Care Requirements.** County will comply with the payment, withholding, incentive and other requirements of 42 CFR § 438.6 that are applicable to any services or supplies provided by County under this Agreement.
12. **Valid Claims.** As applicable, County will submit to Health Share valid claims for services including all the fields and information needed to allow the claim to be

processed without further information from the personnel providing services under this Agreement within timeframes for valid, accurate encounter data submission as required under Exhibit B, Part 8 and other provisions of the Core Contract.

**13. Criminal Background Checks.** County will conduct criminal background checks on all County personnel in advance of County personnel providing Services under this Agreement.

**14. Program Integrity.**

- a. County will comply with and perform all of the same obligations, terms, and conditions of Health Share as set forth in Exhibit B, Part 9 of the Core Contract.
- b. Health Share is in the process of developing a policy setting forth procedures for assessing sanctions and civil monetary penalties against subcontractors. Health Share agrees to provide County with a copy of the policy when it is finalized and amend this Agreement to include the policy in Exhibit E.
- c. County will also have its own fraud and abuse policies and procedures and a mandatory compliance plan, in accordance with in accordance with OAR 410-120-1510, 42 CFR 433.116, 42 CFR 438.214, 438.600 to 438.610, 438.808, 42 CFR 455.20, 455.104 through 455.106 and 42 CFR 1002.3, as applicable, which enable County to prevent and detect fraud and abuse activities as such activities relate to the OHP. County will review County's fraud and abuse policies annually.
- d. Unless expressly provided otherwise in Exhibit B, Part 9 of the Core Contract, County shall report any suspected Fraud, Waste, or Abuse to Health Share no more than five (5) business days after becoming aware of the suspicious case;
- e. County will cooperate, and require its subcontractors to cooperate, with Health Share, Health Share Partners, PAU and the MFCU investigators during any investigation of fraud or abuse. County will permit Health Share, Health Share Partners, OHA, CMS, the DHHS Inspector General, PAU, MFCU to inspect, evaluate, or audit books, records, documents, files, accounts, and facilities maintained by or on behalf of County or by or on behalf of any subcontractor, as required to investigate an incident of fraud and abuse. County will provide copies of reports or other documentation regarding the suspected fraud or abuse at no cost to Health Share, Health Share Partners, PAU or MFCU during an investigation.

- f. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by Oregon Tort Claims Act, County shall indemnify Health Share for Sanctions imposed by OHA on Health Share to the extent the reason for the imposition of Sanctions by OHA under Exhibit B, Part 9, Sections 2 and 3 of the Core Contract is reasonably attributable to the action or inaction of County, provided however that before requiring County to indemnify Health Share for Sanctions, Health Share will follow the procedures set forth in Health Share's sanctions and civil monetary penalties policy and provided further that under no circumstances will County be required to indemnify Health Share for any share of Sanctions assessed against Health Share that are not caused by the actions or inactions of County.

To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by Oregon Tort Claims Act, County shall indemnify Health Share for any civil money penalties that have been assessed by OHA pursuant to Exhibit B, Part 9, Section 4 of the Core Contract to the extent the reason for the imposition of civil money penalties is reasonably attributable to the action or inaction of County, provided however that before requiring County to indemnify Health Share for civil money penalties, Health Share will follow the procedures set forth in Health Share's sanctions and civil monetary penalties policy and provided further that under no circumstances will County be required to indemnify Health Share for any share of the civil money penalties assessed against Health Share that are caused by the actions or inactions of County.

- g. County shall support and assist Health Share in the implementation of temporary management mechanisms, to the extent Health Share is required, in accordance with Exhibit B, Part 9, Section 5 of the Core Contract, to implement and impose such mechanisms.
- h. If OHA requires Health Share to develop and implement a CAP, as described in Exhibit B, Part 9, Section 6 of the Core Contract, County shall support and assist Health Share in developing and implementing the CAP and meeting its reporting obligations under the CAP, to the extent the issues and factors contributing to the breach that gave rise to the CAP are attributable, in whole or in part, in Health Share's sole discretion, to the action or inaction of County.
- i. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by Oregon Tort Claims Act, County shall indemnify Health Share for any civil money penalties that have been assessed by OHA pursuant to Exhibit B, Part 9, Section 7 of the Core Contract to the extent the reason for the imposition of civil money penalties is reasonably attributable to the action or inaction of County, provided however that before requiring County

to indemnify Health Share for civil money penalties, Health Share will follow the procedures set forth in Health Share's sanctions and civil monetary penalties policy and provided further that under no circumstances will County be required to indemnify Health Share for any share of the civil money penalties assessed against Health Share that are not caused by the actions or inactions of County.

- j. County shall support and assist Health Share in meeting the requirements set forth in Exhibit, Part 9, Section 8 of the Core Contract, as requested by Health Share, when indemnification, support or assistance by County is required under Exhibit D, Sections 17.f - 17.j of this Agreement.
- k. County shall develop and implement Fraud, waste, and Abuse prevention policies in accordance with Exhibit B, Part 9, Section 10 of the Core Contract.
- l. County shall comply with the terms and conditions applicable to "Contractor" set forth in Exhibit B, Part 9, Sections 11-18 of the Core Contract provided, however, that instead of submitting documentation or making reports to OHA, County shall report to Health Share only, and not OHA.

**15. Abuse Reporting.** County will comply with all patient abuse reporting requirements and fully cooperate with the State for purposes of ORS 410.610 et seq., ORS 419B.010 et seq., ORS 430.735 et seq., ORS 433.705 et seq., ORS 441.630 et seq., and all applicable rules associated with those statutes. Furthermore, County will comply with all protective services, investigation and reporting requirements described in OAR 943-045-0250 through 943-045-0370 and ORS 430.735 through 430.765.

**16. Transparency: Public Posting of Contract Reports.** Health Share is obligated under the terms of the Core Contract to submit a number of reports to OHA. Such reports may contain information reported to Health Share by County. As described in Exhibit D, Section 14 of the Core Contract, all reports required to be submitted by Health Share to OHA will be made readily available to the public on OHA's website. However, Health Share will have the opportunity to redact all information protected from disclosure under Applicable Laws, including Trade Secrets as such term is defined under ORS 192.345. County shall assist and cooperate with Health Share in reviewing the reports and determining whether any County-reported information can be redacted and protected from disclosure under Applicable Laws.

**17. Timely Access to Care.** County shall, and shall require its subcontractors to, meet standards for timely access to care and services, as set forth in the Core Contract and OAR 410-141-3220, which includes, without limitation, providing services

within a time frame that takes into account the urgency of the needs for services and offering hours of operation that are not less than the hours of operation offered to County's commercial patients (as applicable). County shall arrange for the provision of Services to Members during normal office hours that are not less than the hours of operation offered to County's other clients. County shall prioritize timely access to care for Prioritized Populations and shall meet the timely access standards set forth in Exhibit B, Part 4, Section 2.a of the Core Contract. County shall report information relating to barriers to access to care for Members, as requested by Health Share, and support and assist Health Share in drafting a report of the barriers to access to care and a strategic plan for removing such barriers.

**18. Reporting of Preventive Services.** If County provides any Preventive Care Services, County will report all services provided to Members to Health Share or Plan Partner to which the Member has been assigned for purposes of Health Share's or Plan Partner's Medical Case Management and Record Keeping responsibilities.

**19. Reporting to OHA of Admissions or Discharges.** If the services provided by County under this Agreement includes providing substance use disorder services or Mental Health Services, County will provide to OHA, within 30 days of admission or discharge, with all information required by OHAs most current reporting system, currently "Measures and Outcomes Tracking System" ("MOTS").

**20. Required Background and Training for Substance Use Disorders.** If the services provided by County under this Agreement includes the evaluation of Members for access to and length of stay in substance use disorder services, County will ensure that County's personnel providing such services have the training and background in substance use disorder services and working knowledge of American Society of Addiction Medicine ("ASAM") Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition-Revised ("PPC-2R"). County shall participate with OHA in a review of data about the impact of those criteria on service quality, cost, outcome and access.

**21. Required Training in Integration and Foundations of Trauma Informed Care.** County will ensure that County's personnel providing services under this Agreement are trained in integration, and Foundations of Trauma Informed Care (<http://traumainformedoregon.org/tic-intro-training-modules/>). County shall provide regular, periodic oversight and technical assistance on these topics to County's personnel providing services under this Agreement.

**22. Required Training in Recovery Principles and Motivational Interviewing.** County will ensure that County's personnel providing services under this Agreement are trained in recovery principles and motivational interviewing. County shall provide regular, periodic oversight and technical assistance on these

topics to Practitioners and County personnel providing services under this Agreement.

- 23. Trauma Informed Framework.** If the services provided by County under this Agreement includes the developing of Individual Service and Support Plans for Members, County will ensure that County's personnel providing such services assess for Adverse Childhood Experiences, trauma and resiliency in a Culturally and Linguistically Appropriate manner, using a Trauma Informed framework.
- 24. Drug Addiction Treatment Waivers.** If applicable, County will ensure that County's personnel providing services under this agreement who have a waiver under the Drug Addiction Treatment Act of 2000 and 42 CFR Part 8 are permitted to treat and prescribe buprenorphine for opioid addiction in any appropriate practice setting in which they are otherwise credentialed to practice and in which such treatment would be Medically Appropriate.
- 25. Substance Use Disorder Personnel to Provide Information about Community Resources.** If the services provided by County under this Agreement includes providing substance use disorder services, County will ensure that County's personnel providing such services will provide to Member, to the extent of available community resources and as clinically indicated, information and referral to community services which may include, but are not limited to: child care, elder care, housing, transportation, employment, vocational training, educational services, mental health services, financial services, and legal services.
- 26. No Marketing.** County may not initiate contact or Market independently to Potential Members, directly or through any agent or independent contractor, in an attempt to influence a Client's Enrollment with Health Share or any other entity, without the express written consent of OHA. County may not conduct, directly or indirectly, door-to-door, telephonic, mail, electronic, or other Cold Call Marketing practices to entice the Client to enroll with any entity, or to not enroll with another contractor. County may not seek to influence a Client's Enrollment with Health Share or any other entity in conjunction with the sale of any other insurance.
- 27. Third Party Liability Recovery.** County will provide, in a timely manner upon request, as requested by Health Share in accordance with a request by OHA, or as may be requested directly by OHA, with all Third-Party Liability eligibility information and any other information requested by OHA or Health Share, as applicable, in order to assist in the pursuit of financial recovery. County may not refuse to provide Services, to a Member because of a Third Party potential liability for payment for the Service. County will comply with 42 USC 1395y(b), which gives Medicare the right to recover its benefits from employers and workers' compensation carriers, liability insurers, automobile or no fault insurers, and employer group health plans before any other entity including County. County

acknowledges that where Medicare and Health Share have paid for services, and the amount available from the Third Party Liability is not sufficient to satisfy the Claims of both programs to reimbursement, the Third Party Liability must reimburse Medicare the full amount of its Claim before any other entity including County may be paid. County acknowledges that if the Third Party has reimbursed Health Share or County, or if a Member, after receiving payment from the Third Party Liability, has reimbursed Health Share or County, Health Share or County must reimburse Medicare up to the full amount that Health Share or County received, if Medicare is unable to recover its payment from the remainder of the Third Party Liability payment.

**28. External Quality Review.** In conformance with 42 CFR 438 Subpart E, County will cooperate with OHA by providing access to records and facilities for the purpose of an annual external, independent professional review of the quality outcomes and timeliness of, and access to, the services provided under this Agreement and releasing its right to subrogation in a particular case.

**29. Member Rights Under Medicaid.** County shall have written policies regarding Member rights and responsibilities under Medicaid law specified below and County shall:

- a. Ensure Members are aware that a second opinion is available from a Practitioner, or that County will arrange for Members to obtain a second opinion from a health care professional who is not a Practitioner, at no cost to Members.
- b. Not discriminate in the provision of Services to Members hereunder on the basis of enrollment in the Plan, race, color, national origin, ethnicity, ancestry, religion, sex, marital status, sexual orientation, mental or physical disability, medical condition or history, age or any other category protected under Applicable Laws.
- c. Ensure that Members are aware of their civil rights under Title VI of the Civil Rights Act and ORS Chapter 659A, that Member has a right to report a complaint of discrimination by contacting County, Health Share, OHA, the Bureau of Labor and Industries, or the Office of Civil Rights.
- d. Provide written notice to Members of County's nondiscrimination policy and process to report a complaint of discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, marital status, age or disability in accordance with Applicable Laws, including Title VI of the Civil Rights Act and ORS Chapter 659A.



- e. Provide equal access for both males and females under 18 years of age to appropriate facilities, services, and treatment under this Agreement, consistent with OHA obligations under ORS 417.270.
- f. Make OHA certified or qualified health care interpreter services available free of charge to each Potential Member and Member. This applies to all non-English languages and sign language, not just those that OHA identifies as prevalent. County shall notify its Members, Potential Members, County personnel and Practitioners that oral and sign language interpretation services are available free of charge for any spoken language and sign language and that written information is available in prevalent non-English languages as specified in 42 CFR §438.10(d)(4). County shall notify Potential Members and Members in Marketing Materials, and in County's new hire or other on-boarding materials and other communications, about how to access oral and sign language interpretation and written translation services.
  - i. County shall comply with the requirements of Title II of the Americans with Disabilities Act and Title VI of the Civil Rights Act by assuring communication and delivery of Services to Members with diverse cultural and ethnic backgrounds. Such communication and delivery of Services in compliance with such laws may also require, without limitation, certified or qualified interpreter services for those Members who have difficulty communicating due to a medical condition, disability, or limited English proficiency, or where no adult is available to communicate in English, or there is no telephone. County shall maintain written policies, procedures and plans in accordance with the requirements of OAR 410-141-3515. County shall comply with the requirements of Title II of the Americans with Disabilities Act and ensure that Services provided to Members with disabilities are provided in the most integrated setting appropriate to the needs of those Members. County shall ensure that its employees, subcontractors and facilities are prepared to meet the special needs of Members who require accommodations because of a disability or limited English proficiency. County shall report data on language access and interpreter services to Health Share as requested by Health Share to meet its reporting obligations under Exhibit B, Part 4, Section 2.j of the Core Contract.
  - ii. County shall ensure that all County personnel and Practitioners with Potential Members are fully informed of County policies and the provision of Certified or Qualified Health Care Interpreter services including the Practitioner's offices that have bilingual capacity.

- g. Have in place a mechanism to help Members and Potential Members understand the requirements and benefits of County's plan and develop and provide written information materials and educational programs consistent with the requirements of OAR 410-141-3580 and 410-141-3585.
- h. Allow each Member to choose the Member's own health professional from available Practitioners and facilities to the extent possible and appropriate.
- i. Require, and cause its Practitioners to require, that Members receive information on available treatment options and alternatives presented in a manner appropriate to the Member's condition, preferred language, and ability to understand.
- j. Allow each Member the right to: (i) be actively involved in the development of Treatment Plans to the extent Services provided hereunder are Covered Services, (ii) participate in decisions regarding such Member's own health care, including the right to refuse treatment; (iii) and have the opportunity to execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, or Behavioral Health treatment, (iv) execute directives and powers of attorney for health care established under ORS 127.505 to 127.660 and the Omnibus Budget Reconciliation Act of 1990 -- Patient Self-Determination Act, and (v) have Family involved in such Treatment Planning.
- k. Allow each Member the right to request and receive a copy of Member's own Health Record, (unless access is restricted in accordance with ORS 179.505 or other Applicable Law) and to request that the records be amended or corrected as specified in 45 CFR Part 164.
- l. Ensure that each Member has access to Services that are Covered Services which at least equals access available to other persons served by County.
- m. Ensure Members are free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliations specified in federal regulations on the use of restraints and seclusion.
- n. Require, and cause its Practitioners to require, that Members are treated with respect, with due consideration for the Member's dignity and privacy, and the same as non-Members or other patients who receive services equivalent to Services that are Covered Services.
- o. Ensure, and cause its Practitioners to ensure, that each Member is free to exercise Member's rights, and that the exercise of those rights does not

adversely affect the way County, County personnel, County subcontractors, Practitioners or OHA treat the Member. County shall not discriminate in any way against Members when those Members exercise their rights under the OHP.

- p. Ensure that any cost sharing authorized under this Agreement for Members is in accordance with 42 CFR §447.50 through 42 CFR §447.90 and the applicable Oregon Administrative Rules.
- q. Notify Members of their responsibility for paying a Co-Payment for some services, as specified in OAR 410-120-1230.
- r. If available and upon request by Members, utilize electronic methods to communicate with and provide Member information, provided however that County may only use electronic communications if:
  - i. The recipient has requested or approved electronic transmittal;
  - ii. The identical information is available in written, hard copy format upon request;
  - iii. The information does not constitute a direct notice related to an Adverse Benefit Determination or any portion of the Grievance, Appeal, Contested Case Hearing or any other Member rights or Member protection process;
  - iv. Language and alternative format accommodations are available; and
  - v. All HIPAA requirements are satisfied with respect to personal health information.

**30. Provider Demographics.** County shall report all information to Health Share, as reasonably requested by Health Share, that Health Share will require to prepare its annual Workforce Report, as further described in Exhibit B, Part 4, Section 4 of the Core Contract.

**31. Access to OHA Computer Systems.** If the services performed under this Agreement requires County to have access to or use of any OHA computer system or other OHA Information Asset for which OHA imposes security requirements, and OHA grants County access to such OHA Information Assets or Network and Information Systems, County will comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, “Information Asset” and “Network and Information System” have the

meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.

**32. Required Federal Terms and Conditions.** County shall comply and cause all subcontractors to comply with all applicable standards, policies, orders or requirements that apply to “Contractor” as stated in Exhibit E of the Core Contract.

**33. HIPAA Compliance.** The parties acknowledge and agree that each of OHA, Health Share, and County is a “covered entity” for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA).

- a. County will comply with HIPAA to the extent that any of its activities arising under the Agreement are covered by HIPAA. For example, County shall enter into a business associate agreement with Health Share when required under, and in accordance with, HIPAA.
- b. County will develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this Agreement and the Core Contract and with HIPAA.
- c. Individually Identifiable Health Information about specific individuals is protected from unauthorized use or disclosure consistent with the requirements of HIPAA. County will not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate HIPAA, Privacy Rules in 45 CFR Parts 160 and 164, OHA Privacy Rules, OAR 407-014-0000 et. seq., or either the OHA or Health Share Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://apps.state.or.us/Forms/Served/DE2090.pdf>, or may be obtained from OHA. A copy of Health Share’s Notice of Privacy Practices is posted on the web site at: <http://healthshareoregon.org/notice-of-privacy-practice/>.
- d. County acknowledges and agrees that protected health information (“PHI”) disclosed by County to Health Share may be used by or disclosed to a Health Share Partner pursuant to a business associate agreement between those parties when permissible by Applicable Laws or pursuant to a written consent in compliance with 42 C.F.R. Part 2, as may be amended from time to time. County will obtain Member’s written consent, as required by 42 C.F.R. Part 2 and as may be specified by Health Share, to allow Member’s PHI to be disclosed by County to Health Share Partners and redisclosed by Health Share Partners to Health Share and OHA, but only as such disclosure

and redisclosure is reasonably requested by Health Share, and permitted both by Applicable Laws and this Agreement.

- e. County will adopt and employ reasonable administrative, technical and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that Member Information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with Applicable Laws and the terms and conditions of this Agreement. Security incidents involving Member Information must be immediately reported to Health Share's Compliance Officer.
- f. County will comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS EDT Rules and OAR 407-014-000 through 407-014-0205. In order for County to exchange electronic data transactions with OHA in connection with Claims or encounter data, eligibility or Enrollment information, authorizations or other electronic transaction, County shall comply with the OHA EDT Rules.
- g. If County reasonably believes that County's, Health Share's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County will promptly consult the Health Share Privacy officer. County, Health Share, or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule.

**34. Health Information Technology.** County shall maintain a Health Information System that meets the standards set forth in Exhibit J, Section 1 of the Core Contract.

**35. Social Determinants of Health and Equity.** County shall assist and cooperate with Health Share in carrying out its obligations under Exhibit K of the Core Contract.

**36. Minority-Owned, Woman-Owned and Emerging Small Business Participation.** County shall take reasonable steps, such as through a quote, bid, proposal, or similar process, to ensure that MWESB certified firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts under this Agreement.

**37. Third-Party Insurance.** County will report any Other Primary, third-party Insurance to which a Member be entitled, and shall report such information to Health Share within a timeframe that enables Health Share to report such information to OHA within thirty (30) days of County becoming aware that the applicable Member has such coverage, as required under Exhibit B, Part 8, Section 16 of the Core Contract.

- 38. Involuntary Psychiatric Care.** County shall ensure that any involuntary treatment provided under the Agreement is provided in accordance with Exhibit M, Section 15 of the Core Contract, as applicable. County's director shall work with Health Share to assign civilly committed Members to placement and participate in circuit court hearings related to planned placements, if applicable.
- 39. Workers' Compensation Coverage.** County will comply with ORS 656.017, and will provide worker's compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2).
- 40. Conflicts.** Conflicts between the main body of the Agreement and this OHP Addendum will be resolved and controlled by this OHP Addendum.
- 41. FQHCs, RHCs, and IHCPs.** County will document, maintain and provide to Health Share all encounter data records that document County's reimbursement to federally qualified health centers ("FQHCs"), rural health centers ("RHCs"), and Indian health care providers ("IHCPs").
- 42. Governing Board and Governance Structure.** County shall assist and cooperate with Health Share to fulfill its reporting obligations under Exhibit B, Part 1, Section 1 of the Core Contract.
- 43. Clinical Advisory Panel.** County shall support Health Share's establishment of a Clinical Advisory Panel and shall provide representatives to serve on the Clinical Advisory Panel as reasonably requested by Health Share, if any.
- 44. Tribal Liaison.** County shall assist and support Health Share in the selection and appointment of a Tribal Liaison, in accordance with Exhibit B, Part 1, Section 3.a. of the Core Contract. Such assistance and support may include, if requested by Health Share, appointing a County employee to serve as the Tribal Liaison whose job responsibilities shall be as outlined in Exhibit B, Part 1, Section 3.b. of the Core Contract and any OHA Guidance Documents, as contemplated in Exhibit B, Part 1 Section 3.c. of the Core Contract.
- 45. Delivery System Network Provider Monitoring and Reporting.** County shall support and assist Health Share in meeting its obligations under Exhibit G of the Core Contract.
- 46. Transformation and Quality Strategy.**
- a. County shall assist and cooperate with Health Share in the development and implementation of a Transformation and Quality Strategy and TQS Progress Report. County shall implement all quality assurance and

performance improvement measures that are developed by Health Share as part of Health Share's Transformation and Quality Strategy.

- b. County shall assist and cooperate with Health Share in Health Share's measuring and reporting to OHA its performance using the performance measures set forth in Exhibit B, Part 10, Section 3 of the Core Contract.
- c. OHA has implemented a Quality Pool incentive program that rewards CCOs that demonstrate quality of care provided to their Members as measured by their performance or improvement on the outcome and Quality Measures established by OHA's Metrics & Scoring Committee. County shall collaborate with Health Share to address outcome and Quality Measures, as applicable to County, and work towards sustained improvement in order to assist Health Share in meeting or exceeding its performance targets as set by OHA's Metrics & Scoring Committee. If earned, Health Share may distribute monetary incentive payments from the Quality Pool to County based on Health Share's policies and procedures governing quality pool funds.
- d. County shall assist, cooperate, and participate with Health Share in the development, implementation and reporting of ongoing Performance Improvement Projects that Health Share designs to achieve, through ongoing measurements and intervention, significant improvement, sustained over time, in clinical and non-clinical areas that are expected to improve health outcomes and Member satisfaction.
- e. County shall assist and cooperate with the activities of Health Share's Quality Health Outcomes Committee.
- f. County shall, and shall require its subcontractors and Practitioners, to cooperate with Health Share and OHA by providing access to records and facilities and sufficient information for the purpose of an annual external, independent professional review of County compliance with all applicable state and federal rules, this Agreement, and of the quality outcomes and timeliness of, and access to, Services under this Agreement.





January 28, 2021

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment to an Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority, for Choice Model Services

<b>Purpose/ Outcomes</b>	The Agreement provides funding to the County for local administration of Choice Model Services for eligible residents of Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	Amendment value is \$847,893. New maximum value of this revenue agreement is \$2,119,732.51
<b>Funding Source</b>	State of Oregon, Oregon Health Authority funding.
<b>Duration</b>	Effective January 1, 2021 through December 31, 2021.
<b>Previous Board Action</b>	The 2019-2020 Choice Model Services Agreement was approved by the Board on August 1, 2019, Agenda Item 081519-A3.
<b>Counsel Review</b>	Counsel reviewed and approved Agreement January 4, 2021 (KR).
<b>Procurement Review</b>	Was this item reviewed by Procurement? No. Procurement review not required for revenue agreements.
<b>Strategic Plan Alignment</b>	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division – 503-742-5305
<b>Contract No.</b>	9401

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing & Human Services Department requests approval of Amendment #01 to an Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for the operation of Choice Model Services. Choice Model Services are designed to promote effective use of facility-based mental health treatment, increase care coordination and increase accountability at a local and state level. The initiative supports adults with serious and persistent mental illness (SPMI) in the least restrictive environment possible and minimize use of long-term institutional care.

Behavioral Health is required to provide Exceptional Needs Care Coordination, as appropriate to the needs, preferences and choices of each individuals and activities to remove barriers and facilitate integrated services and supports, which are not funded through other sources. These activities may include, but are not limited to, room and board payments; rental assistance; utility payments; prescription or over-the-counter medications and medical supplies not covered by Medicaid or other sources; transportation; establishment of guardianship services; and peer delivered services.

This Amendment, with the value of \$847,893, is effective from January 1, 2021 and continues through December 31, 2021.

**RECOMMENDATION:**

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

Respectfully submitted,



Richard Swift, Director  
Health, Housing and Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

<b>H3S Contract #:</b> 9401	<b>Division:</b> BH	<input type="checkbox"/> Subrecipient
<b>Board Order #:</b>	<b>Contact:</b> Russell, Angela	<input checked="" type="checkbox"/> Revenue
	<b>Program Contact:</b> Brink, Angela	<input checked="" type="checkbox"/> Amend # 1 \$ \$847,893.00
		<input type="checkbox"/> Procurement Verified
		<input type="checkbox"/> Aggregate Total Verified

Non BCC Item     BCC Agenda    **Date:** Thursday, January 21, 2021

**CONTRACT WITH:** State of Oregon, OHA

**CONTRACT AMOUNT:** \$2,119,732.51

### TYPE OF CONTRACT

- |   |  |
|---|--|
| <input type="checkbox"/> Agency Service Contract                | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement                 | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input checked="" type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease                       |
| <input type="checkbox"/> Interagency Services Agreement         | <input type="checkbox"/> One Off                                     |

### DATE RANGE

- |   |   |  |                       |
|---|---|--|-----------------------|
| <input type="checkbox"/> Full Fiscal Year | - | <input type="checkbox"/> 4 or 5 Year                     | -                     |
| <input type="checkbox"/> Upon Signature   | - | <input type="checkbox"/> Biennium                        | -                     |
| <input type="checkbox"/> Other            | - | <input checked="" type="checkbox"/> Retroactive Request? | 1/1/2021 - 12/31/2021 |

### INSURANCE What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Business Automobile Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Professional Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why:

### COUNTY COUNSEL

Yes by: Rastetter, Kathleen    Date Approved: Monday, January 4, 2021

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

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

H3S Admin Only	Date Received: _____
	Date Signed: _____
	Date Sent: _____





**Agreement Number 159275**

**AMENDMENT TO  
STATE OF OREGON  
INTERGOVERNMENTAL AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This is amendment number **01** to Agreement Number **159275** between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as “OHA” and

**Clackamas County acting by and through its Behavioral Health Division  
2051 Karen Road, Suite 154  
Oregon City, Or 97045  
Attention: Pam Douglas, Contract Analyst  
Elise Thompson  
Telephone: (503) 742-5316  
Facsimile: (503) 742-5312  
E-mail address: [pameladou@co.clackamas.or.us](mailto:pameladou@co.clackamas.or.us)  
[ethompson@co.clackamas.or.us](mailto:ethompson@co.clackamas.or.us)**

hereinafter referred to as “County.”

1. This Amendment, when fully executed by every party, regardless of the date of execution by every party, shall become effective on the date this Amendment has been approved by the Department of Justice or **December 31, 2020**, whichever date is later per the authority under OAR 125-247-0288.
2. The Agreement is hereby amended as follows:
  - a. Section 1 “Effective Date and Duration” is hereby amended to change the expiration date from December 31, 2020 to December 31, 2021.
  - b. Exhibit E, “Financial Pages,” is hereby amended as set forth in Attachment 1, attached hereto and incorporated herein by this reference.

3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.
4. **Certification.** Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies under penalty of perjury that:
  - a. The County is in compliance with all insurance requirements of Exhibit C of the original Agreement and notwithstanding any provision to the contrary, County shall deliver to the OHA Agreement Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance for any extension of the insurance coverage required by Exhibit C of the original Agreement, within 30 days of execution of the original Agreement Amendment. By certifying compliance with all insurance as required by this Agreement, County acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. County may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;
  - b. The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any “claim” (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a “false claim” (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County;
  - c. The information shown in County Data and Certification, of original Agreement or as amended is County’s true, accurate and correct information;
  - d. To the best of the undersigned’s knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  - e. County and County’s employees and agents are not included on the list titled “Specially Designated Nationals” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;
  - f. County is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Nonprocurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>;

- g. County is not subject to backup withholding because:
  - (1) County is exempt from backup withholding;
  - (2) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
  - (3) The IRS has notified County that County is no longer subject to backup withholding.
- h. County Federal Identification Number (FEIN) provided to OHA is true and accurate. If this information changes, County is also required to provide OHA with the new FEIN within 10 days.

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

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

**County Name (exactly as filed with the IRS):** \_\_\_\_\_

Clackamas County

Street address: 2051 Kaen Road, Suite 154

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

Email address: EThompson@clackamas.us and BHContracts@clackamas.us

Telephone: ( 503 ) 742-5335 Facsimile: ( 503 ) 742-5312

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

Workers' Compensation Insurance Company: Self-insured

Policy #: N/A Expiration Date: Ongoing

**5. Signatures.**

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

**Clackamas County acting by and through its Behavioral Health Division By:**

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

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

_____	_____
Authorized Signature	Printed Name
_____	_____
Title	Date

**Approved by: Director, OHA Health Systems Division  
By:**

_____	_____	_____	_____
Authorized Signature	Printed Name	Title	Date

**Approved for Legal Sufficiency:**

Via e-mail by Jeffrey J. Wahl, Assistant Attorney General on December 18, 2020; email in agreement file.

_____	_____
Department of Justice	Date

**OHA Program**

Approved via email by Theresa Naegeli on December 17, 2020; email in agreement file.



# Attachment 1 Exhibit E Financial Pages

## MODIFICATION INPUT REVIEW REPORT

MOD#: M0250

CONTRACT#: 159275

CONTRACTOR: CLACKAMAS COUNTY-CHOICE

INPUT CHECKED BY: \_\_\_\_\_ DATE CHECKED: \_\_\_\_\_

SE#	FUND CODE	PROJ CPMS PROVIDER	EFFECTIVE DATES	SLOT CHANGE/TYPE	RATE	OPERATING DOLLARS	STARTUP PART DOLLARS ABC	PART IV	PAAF CD	BASE	CLIENT CODE	SP#
FISCAL YEAR: 2020-2021												
	<b>BASE</b>	<b>CHOICE MODEL SERVICE</b>										
6	804	CHOICE	1/1/2021 - 6/30/2021	0 /NA	\$0.00	\$402,749.18	\$0.00	A	1	N		1
	<b>BASE</b>	<b>CHOICE MODEL SERVICE</b>										
6	804	CHOICE	1/1/2021 - 6/30/2021	0 /NA	\$0.00	\$21,197.33	\$0.00	C	1	N		2
				TOTAL FOR SE# 6		<u>\$423,946.51</u>	<u>\$0.00</u>					
				TOTAL FOR 2020-2021		<u>\$423,946.51</u>	<u>\$0.00</u>					
FISCAL YEAR: 2021-2022												
	<b>BASE</b>	<b>CHOICE MODEL SERVICE</b>										
6	804	CHOICE	7/1/2021 - 12/31/2021	0 /NA	\$0.00	\$402,749.17	\$0.00	A	1	N		1
	<b>BASE</b>	<b>CHOICE MODEL SERVICE</b>										
6	804	CHOICE	7/1/2021 - 12/31/2021	0 /NA	\$0.00	\$21,197.32	\$0.00	C	1	N		2
				TOTAL FOR SE# 6		<u>\$423,946.49</u>	<u>\$0.00</u>					
				TOTAL FOR 2021-2022		<u>\$423,946.49</u>	<u>\$0.00</u>					
				TOTAL FOR M0250 159275		<b>\$847,893.00</b>	<b>\$0.00</b>					

OREGON HEALTH AUTHORITY  
Direct Contract

CONTRACTOR: CLACKAMAS COUNTY-CHOICE  
DATE: 12/14/2020

CONTRACT#: 159275  
AMENDMENT#: 001

REASON FOR CONTRACT/AMENDMENT:

Choice Model Services (MHS 6), payments are added.

SPECIAL CONDITIONS:

- 1           These payments are for MHS 06 Choice Model Services.
- 2           These payments are for MHS 06 Choice Model Services performance payment.

# DOCUMENT RETURN STATEMENT

Please complete the following statement and return with the completed signature page and the Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable.

If you have any questions or find errors in the above referenced Document, please contact the contract specialist.

**Document number:** 159275, Amendment #01 , hereinafter referred to as "Document."

I, \_\_\_\_\_  
Name Title

received a copy of the above referenced Document, between the State of Oregon, acting by and through the Department of Human Services, the Oregon Health Authority, and

\_\_\_\_\_ by email.

**Contractor's name**

On \_\_\_\_\_,  
Date

I signed the electronically transmitted Document without change. I am returning the completed signature page, Contractor Data and Certification page and/or Contractor Tax Identification Information (CTII) form, if applicable, with this Document Return Statement.

\_\_\_\_\_  
Authorizing signature

\_\_\_\_\_  
Date

Please attach this completed form with your signed document(s) and return to the contract specialist via email.



January 28, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment #3 to the Intergovernmental Agreement with State of Oregon,  
Oregon Health Authority, for the Foodborne Illness Prevention Program

<b>Purpose/Outcomes</b>	Amendment #3 increases the fees paid to OHA for the Food Bourne Illness Prevention Program
<b>Dollar Amount and Fiscal Impact</b>	Amendment #03 increases the contract value by \$90,069 brining the contract maximum value to \$715,859.00
<b>Funding Source</b>	Fee for Services - No County General Funds are involved.
<b>Duration</b>	Effective upon signature and terminates on June 30, 2021
<b>Previous Board Action</b>	The Board previously reviewed and approved this agreement on June 22, 2017, Agenda item 062217-A2
<b>Strategic Plan Alignment</b>	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	County counsel has reviewed and approved this document on December 14, 2020 KR
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
<b>Contact Person</b>	Philip Mason-Joyner, Public Health Director – (503)742-5956
<b>Contract No.</b>	8351-03

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #3 to the Intergovernmental Agreement with State of Oregon, Oregon Health Authority for the Food Bourne Illness Prevention Program. This agreement allows CCPHD to provide complete environmental health food licensing and inspections to safeguard the health of residents in Clackamas County. Amendment #3 increases the fees paid to OHA for the Food Bourne Illness Prevention Program as outlined by ORS 624.490.

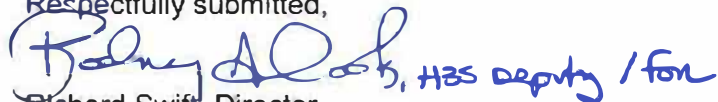
Amendment #03 increases the contract value by \$90,069 brining the contract maximum value to \$715,859.00. This Amendment is effective upon signature and continues through June 30, 2021.

Page 2 Staff Report  
January 21, 2020  
Agreement #8351-03

**RECOMMENDATION:**

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

Respectfully submitted,

  
Richard Swift, Director  
Health, Housing, and Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

**H3S Contract #:** 8351      **Division:** PH       Subrecipient  
**Board Order #:**      **Contact:** Weber, Jeanne       Revenue  
                                 **Program Contact:**       Amend # 3 \$ \$90,069.00  
                                 Hamilton, Julie       Procurement Verified  
                                       Aggregate Total Verified

Non BCC Item       BCC Agenda      **Date:** Thursday, January 21, 2021

**CONTRACT WITH:** OR-Oregon Health Authority

**CONTRACT AMOUNT:** \$715,859.00

### TYPE OF CONTRACT

- |   |  |
|---|--|
| <input type="checkbox"/> Agency Service Contract                | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement                 | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input checked="" type="checkbox"/> Intergovernmental Agreement | <input type="checkbox"/> Property/Rental/Lease                       |
| <input type="checkbox"/> Interagency Services Agreement         | <input type="checkbox"/> One Off                                     |

### DATE RANGE

- |  |   |
|--|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____              | <input type="checkbox"/> 4 or 5 Year _____ - _____  |
| <input checked="" type="checkbox"/> Upon Signature _____ - 6/30/2021 | <input type="checkbox"/> Biennium _____ - _____     |
| <input type="checkbox"/> Other _____ - _____                         | <input type="checkbox"/> Retroactive Request? _____ |

### INSURANCE What insurance language is required?

Checked Off       N/A

**Commercial General Liability:**       Yes       No, not applicable       No, waived

If no, explain why:

**Business Automobile Liability:**       Yes       No, not applicable       No, waived

If no, explain why:

**Professional Liability:**       Yes       No, not applicable       No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No       Yes (must have CC approval-next box)       N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by Kathleen Rastetter \_\_\_\_\_ Date Approved: Monday, December 14, 2020

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE: \_\_\_\_\_

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

H3S Admin  
Only

Date Received: \_\_\_\_\_  
Date Signed: \_\_\_\_\_  
Date Sent: \_\_\_\_\_

# AGREEMENTS/CONTRACTS

**New Agreement/Contract**  
 **Amendment/Change Order Original Number** \_\_\_\_\_

**ORIGINATING COUNTY**

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

**PURCHASING FOR: Contracted Services** \_\_\_\_\_

**OTHER PARTY TO**

**CONTRACT/AGREEMENT: OR-Oregon Health Authority** \_\_\_\_\_

**BOARD AGENDA ITEM**

**NUMBER/DATE:** \_\_\_\_\_ **DATE: 1/21/2021** \_\_\_\_\_

**PURPOSE OF**

**CONTRACT/AGREEMENT: Foodbourn Illness Protection Program (FIPP)**

Amendment #3 increases the amount paid to OHA foir year 2 of the bienium.per  
ORS 624.490,

**H3S CONTRACT NUMBER: 8351** \_\_\_\_\_



**OREGON HEALTH AUTHORITY  
INTERGOVERNMENTAL AGREEMENT  
FOR ENVIRONMENTAL HEALTH SERVICES**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This **Third Amendment** to Oregon Health Authority Intergovernmental Agreement for Environmental Health Services (as amended the "Agreement"), is between the State of Oregon acting by and through its Oregon Health Authority ("OHA") and Clackamas County Health Department, the Local Public Health Authority ("LPHA"), acting by and through its Health and Human Services Department, each a "Party" and together, the "Parties."

**AGREEMENT**

1. Section 6, LPHA Responsibilities, Subsection 6.2, is hereby amended as follows: language to be replaced or changed is ~~struck through~~; new language is **underlined and bold**.
  - 6.2 Not later than thirty (30) days following receipt of an invoice from OHA, remit the following licensing fees to OHA:
    - For the tourist facility program, fifteen percent (15 %) of the state licensing fee or fifteen percent (15 %) of the county licensing whichever is less collected by county that quarter, in accordance with ORS 446.425;
    - For the pool facility program, in the amount of \$45, for each license issued by the LPHA in that quarter under ORS 448.035 or such other amount agreed upon by the parties;
    - For the restaurant, bed and breakfast facility, commissary, mobile unit and warehouse licensing programs, a predetermined percentage of licensing revenue. For each biennium, this amount is determined by dividing OHA's food program costs by the total projected statewide licensing revenue. Statewide revenue is calculated using marker fees set forth in ORS 624.490. The projected food program cost for July 1, 2019 through June 30, 2020 is \$1,025,276. The total statewide revenue projection for this timeframe is \$5,891,104. The resulting remittance factor is 17.4%. ( $\$1,025,276 \div \$5,891,104 = 17.4\%$ )

NOTE: This remittance factor is based on statewide licensing fees set forth in ORS 624.490 prior to July 1, 2019. Senate Bill 28 of the 2019 Oregon Legislative Session increased statewide licensing fees effective July 1, 2019. The remittance factor of 17.4% will remain in effect for one year (July 1, 2019 through June 30, 2020). An amendment to this Agreement will address the revised licensing fees for the second half of the biennium (July 1, 2020 through June 30, 2021) as necessary;
    - **The remittance factor for July 1, 2020 through June 30, 2021 is 14.68%. (Total annual cost to implement the statewide food program (\$1,288,257) divided by the statewide revenue projection (\$8,775,785) equals the remittance factor (14.68%)).**
    - **For Clackamas County, the total remittance to OHA to support the statewide food program from July 1, 2020 to June 30, 2021 is \$90,069**

2. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
3. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.
4. This Amendment becomes effective on the date of the last signature below.
5. LPHA Data and Certification.
  - a. **LPHA Information.** LPHA shall provide information set forth below. This information is requested pursuant to ORS 305.385.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

**LPHA Name (exactly as filed with the IRS):** \_\_\_\_\_

Clackamas County

---

Street address: 2051 Kaen Rd.

---

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

---

Email address: rswift@clackamas.us

---

Telephone: ( 503 ) 650-5694 Facsimile: ( )

---

Federal Employer Identification Number: 93-6002286

**Proof of Insurance:**

Workers' Compensation Insurance Company: Self-Insured

Policy #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

The above information must be provided prior to Agreement approval. LPHA shall provide proof of Insurance upon request by OHA or OHA designee.

- b. **Certification.** The LPHA acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the LPHA and that pertains to this Agreement or to the project for which the Agreement work is being performed. The LPHA certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. LPHA further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the LPHA. Without limiting the generality of the foregoing, by signature on this Agreement, the LPHA hereby certifies that:
  - (1) The information shown in this Section 5, LPHA Data and Certification, is LPHA's true, accurate and correct information;
  - (2) To the best of the undersigned's knowledge, LPHA has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
  - (3) LPHA and LPHA's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
<https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

- (4) LPHA is not listed on the non-procurement portion of the General Service Administration’s “List of Parties Excluded from Federal procurement or Non-procurement Programs” found at: <https://www.sam.gov/portal/public/SAM/>; and
  - (5) LPHA is not subject to backup withholding because:
    - (a) LPHA is exempt from backup withholding;
    - (b) LPHA has not been notified by the IRS that LPHA is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (c) The IRS has notified LPHA that LPHA is no longer subject to backup withholding.
- c. LPHA is required to provide its Federal Employer Identification Number (FEIN). By LPHA’s signature on this Agreement, LPHA hereby certifies that the FEIN provided to OHA is true and accurate. If this information changes, LPHA is also required to provide OHA with the new FEIN within 10 days.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

**6. Signatures.**

**OREGON HEALTH AUTHORITY**

By: \_\_\_\_\_  
 Name: Andre Ourso  
 Title: Administrator, Center for Health Protection  
 Date: \_\_\_\_\_

**Clackamas County Health Department LOCAL PUBLIC HEALTH AUTHORITY**

By: \_\_\_\_\_  
 Name: Richard Swift  
 Title: Director, Health, Housing and Human Services  
 Date: \_\_\_\_\_

**DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY**

Jeffrey J. Wahl approved via email 7/16/2020.

**REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION**

By: \_\_\_\_\_  
 Name: Brett Sherry (or designee)  
 Title: Program Manager  
 Date: \_\_\_\_\_



January 28, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Amendment #16 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County

<b>Purpose/Outcomes</b>	Amendment #16 adds funding to Program Element 12- Public Health Emergency Preparedness and Response, Program Element 40-02 WIC NSA: October – June, and Program Element 43-06 – Cares Flu
<b>Dollar Amount and Fiscal Impact</b>	Contract is increased by \$72,789. Bringing the contract maximum value to \$11,730,162
<b>Funding Source</b>	Funding through the State - No County General Funds are involved.
<b>Duration</b>	Effective November 1, 2020 and terminates on June 30, 2021
<b>Previous Board Action</b>	The Board previously reviewed and approved this agreement on June 20, 2019, Agenda item 062019-A1, September 5, 2019, Agenda item 090519-A1, September 26, 2019, Agenda item 092619-A5, October 24, 2019, Agenda item 102419-A5, October 31, 2019, Agenda item 103119-A3, December 12, 2019, Agenda item 121219-A2, January 8, 2020, Agenda item 010920-A8, March 26, 2020, Agenda Item 032620-A5, April 23, 2020, June 25, 230, Agenda item 062520-A8, October 22, 2020, Agenda item 102220-A1,
<b>Strategic Plan Alignment</b>	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	County counsel has reviewed and approved this document on December 15, 2021 KR
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. This item is an IGA
<b>Contact Person</b>	Philip Mason-Joyner, Public Health Director – (503)742-5956
<b>Contract No.</b>	9329-16

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #16 to the Intergovernmental Agreement with State of Oregon, Oregon Health Authority. Amendment #16 adds funding to Program Element 12- Public Health Emergency Preparedness and Response, Program Element 40-02 WIC NSA: October – June, and Program Element 43-06 – Cares Flu Contract is increased by \$72,789. Bringing the contract maximum value to \$11,730,162

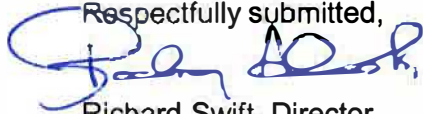
This contract is effective November 1, 2020 and continues through June 30, 2021.

Page 2 Staff Report  
January 21, 2021  
Agreement #9329-16

**RECOMMENDATION:**

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

Respectfully submitted,



*Richard Swift, H3S Deputy / for*

Richard Swift, Director  
Health, Housing, and Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

**H3S Contract #:** 9329

**Division:** PH

Subrecipient

**Board Order #:**

**Contact:** Weber, Jeanne

Revenue

Amend # 16 \$ 72,789.00

**Program Contact:**

Swift, Rich

Procurement Verified

Aggregate Total Verified

Non BCC Item

BCC Agenda

**Date:** Thursday, January 21, 2021

**CONTRACT WITH:** OR-Oregon Health Authority

**CONTRACT AMOUNT:** \$11,730,162.00

### TYPE OF CONTRACT

Agency Service Contract

Memo of Understanding/Agreement

Construction Agreement

Professional, Technical & Personal Services

Intergovernmental Agreement

Property/Rental/Lease

Interagency Services Agreement

One Off

### DATE RANGE

Full Fiscal Year

4 or 5 Year

Upon Signature

Biennium

Other

Retroactive Request? 11/1/2020 - 6/30/2021

### INSURANCE What insurance language is required?

Checked Off  N/A

**Commercial General Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Business Automobile Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

**Professional Liability:**

Yes

No, not applicable

No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

### BOILER PLATE CHANGE

Has contract boilerplate language been altered, added, or deleted?

No

Yes (must have CC approval-next box)

N/A

(Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

### COUNTY COUNSEL

Yes by Kathleen Rastetter

Date Approved: Monday, December 14, 2020

OR

This contract is in the format approved by County Counsel.

### SIGNATURE OF DIVISION REPRESENTATIVE:

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

H3S Admin  
Only

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

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

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

# AGREEMENTS/CONTRACTS

**New Agreement/Contract**  
 **Amendment/Change Order Original Number** \_\_\_\_\_

**ORIGINATING COUNTY**

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

**PURCHASING FOR: Contracted Services** \_\_\_\_\_

**OTHER PARTY TO**

**CONTRACT/AGREEMENT: OR-Oregon Health Authority** \_\_\_\_\_

**BOARD AGENDA ITEM**

**NUMBER/DATE: \_\_\_\_\_ DATE: 1/21/2021** \_\_\_\_\_

**PURPOSE OF**

**CONTRACT/AGREEMENT: 2019-2021 Local Public Health Authority Agreement  
for Public Health Services.**

AAmendment #16 adds funds to PE-12 PHEP, PE40-02, and PE43-06 increasing contract value by \$72,789. bringing the Maximum contract value to \$11,730,162.00.

**H3S CONTRACT NUMBER: 9329** \_\_\_\_\_



Agreement #159803



**SIXTEENTH AMENDMENT TO OREGON HEALTH AUTHORITY  
2019-2021 INTERGOVERNMENTAL AGREEMENT FOR THE  
FINANCING OF PUBLIC HEALTH SERVICES**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to [dhs-oha.publicationrequest@state.or.us](mailto:dhs-oha.publicationrequest@state.or.us) or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Sixteenth Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2019, (as amended the "Agreement"), is between the State of Oregon acting by and through its Oregon Health Authority ("OHA") and Clackamas County, ("LPHA"), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Clackamas County.

**RECITALS**

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2021 (FY21) Financial Assistance Award set forth in Exhibit C of the Agreement.

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

**AGREEMENT**

1. This Amendment is effective on the first day of the of the month noted in the Issue Date section of Exhibit C Financial Assistance Award FY21.
2. Section 1 of Exhibit C of the Amended and Restated Agreement, entitled "Financial Assistance Award" for FY21 is hereby superseded and replaced in its entirety by Attachment A, entitled "Financial Assistance Award (FY21)", attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 3 of Exhibit C.
3. Exhibit J of the Amended and Restated Agreement entitled "Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200" is amended to add to the federal award information datasheet as set forth in Attachment B, attached hereto and incorporated herein by this reference.
4. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 4 of Exhibit F of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
5. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
6. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
7. The parties expressly ratify the Agreement as herein amended.

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

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

9. **Signatures.**

By: \_\_\_\_\_  
Name: /for/ Carole L. Yann  
Title: Director of Fiscal and Business Operations  
Date: \_\_\_\_\_

**CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY**

*Approved by Wendy Johnson, Senior Assistant Attorney General on July 9, 2020. Copy of emailed approval on file at OHA, OC&P.*

**REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION**

By: \_\_\_\_\_  
Name: Derrick Clark (or designee)  
Title: Program Support Manager  
Date: \_\_\_\_\_

**Attachment A  
Financial Assistance Award (FY21)**

State of Oregon Oregon Health Authority Public Health Division				
<b>1) Grantee</b> Name: Clackamas County  Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip: 97045-4035		<b>2) Issue Date</b> Sunday, November 1, 2020		<b>This Action</b> Existing Award FY 2021
		<b>3) Award Period</b> From July 1, 2020 through June 30, 2021		
<b>4) OHA Public Health Funds Approved</b>				
<b>Number</b>	<b>Program</b>	<b>Previous Award Balance</b>	<b>Increase / Decrease</b>	<b>Current Award Balance</b>
PE01-01	State Support for Public Health	\$506,554.00	\$0.00	\$506,554.00
PE01-04	COVID19 Response	\$0.00	\$0.00	\$0.00
PE01-05	COVID-19 Local Active Monitoring	\$2,799,435.00	\$0.00	\$2,799,435.00
PE02	Cities Readiness Initiative	\$35,546.00	\$0.00	\$35,546.00
PE07	HIV Prevention Services	\$127,562.00	\$0.00	\$127,562.00
PE12	Public Health Emergency Preparedness and Response (PHEP)	\$165,988.00	\$11,398.00	\$177,386.00
PE13-01	Tobacco Prevention and Education Program (TPEP)	\$275,286.00	\$0.00	\$275,286.00
PE27-04	PDOP Naloxone Project (SOR)	\$16,248.00	\$0.00	\$16,248.00
PE27-05	PDOP Bridge (PDO/SOR)	\$30,000.00	\$0.00	\$30,000.00
PE40-01	WIC NSA: July - September	\$191,491.00	\$0.00	\$191,491.00
PE40-02	WIC NSA: October - June	\$574,475.00	\$5,000.00	\$579,475.00
PE40-03	BFPC: July - September	\$18,191.00	\$0.00	\$18,191.00
PE40-04	BFPC: October - June	\$54,574.00	\$0.00	\$54,574.00
PE40-05	Farmer's Market	\$53.00	\$0.00	\$53.00

State of Oregon Oregon Health Authority Public Health Division				
<b>1) Grantee</b> Name: Clackamas County  Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip: 97045-4035		<b>2) Issue Date</b> Sunday, November 1, 2020		<b>This Action</b> Existing Award FY 2021
		<b>3) Award Period</b> From July 1, 2020 through June 30, 2021		
<b>4) OHA Public Health Funds Approved</b>				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE42-03	MCAH Perinatal General Funds & Title XIX	\$11,118.00	\$0.00	\$11,118.00
PE42-04	MCAH Babies First! General Funds	\$35,527.00	\$0.00	\$35,527.00
PE42-06	MCAH General Funds & Title XIX	\$20,860.00	\$0.00	\$20,860.00
PE42-11	MCAH Title V	\$119,462.00	\$0.00	\$119,462.00
PE42-12	MCAH Oregon Mothers Care Title V	\$9,482.00	\$0.00	\$9,482.00
PE43-01	Public Health Practice (PHP) - Immunization Services	\$92,240.00	\$0.00	\$92,240.00
PE43-06	CARES Flu	\$52,376.00	\$56,391.00	\$108,767.00
PE44-01	SBHC Base	\$300,000.00	\$0.00	\$300,000.00
PE44-02	SBHC - Mental Health Expansion	\$376,500.00	\$0.00	\$376,500.00
PE46-05	RH Community Participation & Assurance of Access	\$43,532.00	\$0.00	\$43,532.00
PE50	Safe Drinking Water (SDW) Program (Vendors)	\$176,970.00	\$0.00	\$176,970.00
PE51-01	LPHA Leadership, Governance and Program Implementation	\$287,331.00	\$0.00	\$287,331.00
PE62	Overdose Prevention-Counties	\$123,545.00	\$0.00	\$123,545.00
		\$6,444,346.00	\$72,789.00	\$6,517,135.00

State of Oregon Oregon Health Authority Public Health Division			
<b>1) Grantee</b> Name: Clackamas County  Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip: 97045-4035		<b>2) Issue Date</b> Sunday, November 1, 2020	<b>This Action</b> Existing Award FY 2021
		<b>3) Award Period</b> From July 1, 2020 through June 30, 2021	
<b>4) OHA Public Health Funds Approved</b>			
Number	Program	Previous Award Balance	Increase / Decrease
<b>5) Foot Notes:</b>			
PE62	8/2020: Indirect Cost Rate for the Federal Award is 10.00%. Recipients of PEs funded by this award shall not use more than 10.00% on indirect costs.		
PE43-06	Allowable expenses for FY21 include the period of 6/6/2020 – 6/30/2021. All expenses for the entire period should be reported on the FY21 Revenue and Expenditure reports.		
PE42-12	Initial SFY21: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.		
PE42-12	Initial SFY21: Due to COVID-19 pandemic, additional one-time funding was allocated to OMC sites in FY21 to support outreach and service provision efforts.		
PE42-11	Initial SFY21: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.		
PE40-04	Initial SFY21: Report eligible expenses in Q2, Q3 and Q4 on the Quarterly Revenue and Expenditure Report		
PE40-03	Initial SFY21: July - September 2020 (PE40-03) award must be spent by 9/30/2020. The expenses for State reimbursement should be put on 1st quarter Revenue and Expense Report. The underspent amount cannot be carried over to October 2020 - June 2021 (PE40-04)		
PE40-02	Initial SFY21: Report eligible expenses in Q2, Q3 and Q4 on the Quarterly Revenue and Expenditure Report.		
PE40-02	11/2020: Award adjustment for telehealth work, see updated PE40-02 comment for new Nutrition Ed and Breastfeeding Ed amounts		
PE40-01	Initial SFY21: July - September 2020 (PE40-01) award must be spent by 9/30/2020. The expenses for State reimbursement should be put on 1st quarter Revenue and Expense Report. The underspent amount cannot be carried over to October 2020 - June 2021 (PE40-02).		

State of Oregon Oregon Health Authority Public Health Division				
<b>1) Grantee</b> Name: Clackamas County  Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip: 97045-4035		<b>2) Issue Date</b> Sunday, November 1, 2020		<b>This Action</b> Existing Award FY 2021
		<b>3) Award Period</b> From July 1, 2020 through June 30, 2021		
<b>4) OHA Public Health Funds Approved</b>				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE27-05	Initial SFY21: Indirect Cost Rate for the Federal Award is 10.00%. Recipients of PEs funded by this award shall not use more than 10.00% on indirect costs.			
PE27-04	Initial SFY21: Indirect Cost Rate for the Federal Award is 10.00%. Recipients of PEs funded by this award shall not use more than 10.00% on indirect costs.			
PE12	11/2020: Increase award due to OHA's carryover funds from CDC, funds awarded to SFY21 must be spent by June 30, 2021			
PE01-05	9/2020: SFY21 Funds can be spent from 7/1/20-12/30/2020 only. CARES Act funding. Indirect expenses are not allowed.			
PE01-04	9/2020: SFY21 Funding for 7/1/2020-12/30/2020 is CARES Act funding. Funds must be spent by 12/30/20. Indirect charges are not permitted.			
<b>6) Comments:</b>				
PE01-01	8/2020: Adding revised PE01 language to all grantees, changes are to align PE language with the current SFY21 template, no changes to award amount. 9/2020: Adding revised PE language clarifying Memorandum of Understanding requirements.			
PE01-04				
PE01-05	9/2020a: SFY21 Rollover of unspent funds \$565,749.49 from FY20 to FY21. Must be spent by 12/30/20. 9/2020b. Case investigation FFS 3/27-7/31/20 \$1,523,814.88; 10/2020 Rollover add FY20 unspent funds of \$14,116.83 to FY21; Case Investigation FFS through 8/31/20 \$695,753.80			
PE02				
PE07	08/2020: PE language updated to reflect change in systems for data entry associated with HIV testing and to update expired links throughout document. Initial SFY21: \$39,233 FF available for use 07/01/20-12/31/20; \$39,233 FF available for use 01/01/21-06/30/21; \$49,096 GF available for use 07/01/20-06/30/21			
PE12	08/2020: Amending to revise PE12 language			
PE13-01				
PE27-04	Initial SFY21: \$16,248 available 7/1/2020 - 9/29/2020.			

State of Oregon Oregon Health Authority Public Health Division				
<b>1) Grantee</b>		<b>2) Issue Date</b>		<b>This Action</b>
Name: Clackamas County		Sunday, November 1, 2020		Existing Award
Street: 2051 Kaen Rd., Suite 637				FY 2021
City: Oregon City		<b>3) Award Period</b>		
State: OR Zip: 97045-4035		From July 1, 2020 through June 30, 2021		
<b>4) OHA Public Health Funds Approved</b>				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE27-05	Initial SFY21: \$30,000 in FY21 available 7/1/2020 - 9/29/2020.			
PE40-01	Initial SFY21: Spend \$38,298 on Nutrition Ed; \$7,605 on BF Promotion			
PE40-02	Initial SFY21: Spend \$114,895 on Nutrition Ed; \$22,815 on Breastfeeding Ed 11/2020: Spend \$115,895 on Nutrition Ed; \$22,815 on Breastfeeding Ed; Previous comment void and replaced by this one			
PE40-03	Initial SFY21: Award amount to be spent by 9/30/2020			
PE40-04				
PE40-05	Initial SFY21: 50% to be paid on 7/1/2020; 50% to be paid on 10/1/2020			
PE42-03				
PE42-04				
PE42-06				
PE42-11				
PE42-12				
PE43-01				
PE43-06				
PE44-01				
PE44-02				
PE46-05				
PE50				

State of Oregon Oregon Health Authority Public Health Division				
<b>1) Grantee</b> Name: Clackamas County  Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip: 97045-4035	<b>2) Issue Date</b> Sunday, November 1, 2020	<b>This Action</b> Existing Award FY 2021		
		<b>3) Award Period</b> From July 1, 2020 through June 30, 2021		
<b>4) OHA Public Health Funds Approved</b>				
Number	Program	Previous Award Balance	Increase / Decrease	Current Award Balance
PE51-01				
PE62	8/2020: \$123,545 in FY21 is from OD2A YR 2, Funding Available 10/1/20-6/30/21			

**7) Capital outlay Requested in this action:**

Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.

Program	Item Description	Cost	PROG APPROV	



**Attachment B**  
**Information required by CFR Subtitle B with guidance at 2 CFR Part 200**

**PE12 Public Health Emergency Preparedness and Response (PHEP)**

Federal Award Identification Number:	NU90TP922036	NU90TP922036
Federal Award Date:	06/22/2020	07/07/2020
Performance Period:	07/01/2019-06/30/2024	07/01/2019-06/30/2021
Awarding Agency:	DHHS/CDC	DHHS/CDC
CFDA Number:	93.069	93.069
CFDA Name:	Public Health Emergency	Public Health Emergency
Total Federal Award:	\$8,158,206	\$8,106,290
Project Description:	Public Health Emergency	PHEP Carryover Funds
Awarding Official:	Lisa Davis	Brandi Johnson
Indirect Cost Rate:	17.85%	17.45%
Research and Development (T/F):	FALSE	FALSE
PCA:	53318	53394
Index:	50407	50407

Agency	DUNS No.	Amount	Amount	Grand Total
Clackamas	096992656	\$165,988.00	\$11,398.00	\$177,386.00

**PE40-02 WIC NSA: October - June**

Federal Award Identification Number:	217OROR7W1003	217OROR7W1003	217OROR7W1003
Federal Award Date:	5/1/2020	5/1/2020	5/1/2020
Performance Period:	10/1/2020-6/30/2021	10/1/2020-6/30/2021	10/1/2020-6/30/2021
Awarding Agency:	USDA FNS	USDA FNS	USDA FNS
CFDA Number:	10.557	10.557	10.557
CFDA Name:	WIC NSA Grant	WIC NSA Grant	WIC NSA Grant
Total Federal Award:	30,000,000	30,000,000	30,000,000
Project Description:	Supplemental Nutrition Program (WIC)	Supplemental Nutrition Program (WIC)	Supplemental Nutrition Program (WIC)
Awarding Official:	USDA Western Region	USDA Western Region	USDA Western Region
Indirect Cost Rate:	17.56%	17.56%	17.56%
Research and Development (T/F):	FALSE	FALSE	FALSE
PCA:	52278	52280	52279
Index:	50331	50331	50331

Agency	DUNS No.	Amount	Amount	Amount	Grand Total
Clackamas	096992656	\$440,765.00	\$115,895.00	\$22,815.00	\$579,475.00

**PE42-12 MCAH Oregon Mothers Care Title V**

Federal Award Identification Number:	B04MC33862
Federal Award Date:	03/17/2020
Performance Period:	10/01/2019 - 09/30/2021
Awarding Agency:	DHHS/HRSA
CDFA Number:	93.994
CFDFA Name:	MCH Title V Block Grant
Total Federal Award:	\$4,647,190
Project Description:	Maternal and Child Health Services
Awarding Official:	Carolyn Gleason
Indirect Cost Rate:	10%
Research and Development (T/F):	FALSE
PCA:	52238
Index:	50336

Agency	DUNS No.	Amount	Grand Total:
Clackamas	096992656	\$9,482.00	\$9,482.00

**PE43-06 CARES Flu**

Federal Award Identification Number:	NH23IP922626	NH23IP922626
Federal Award Date:	07/22/2020	9/23/2020
Performance Period:	07/01/2019-06/30/2024	7/1/20-6/30/2021
Awarding Agency:	CDC	CDC
CDFA Number:	93.268	93.268
CFDFA Name:	Immunization Cooperative Agreements	Immunization Cooperative Agreements
Total Federal Award:	\$12,982,022.00	8030351
Project Description:	Immunization and	Immunization and
Awarding Official:	Divya Cassity	Divya Cassity
Indirect Cost Rate:	17.86	17.64
Research and Development (T/F):	FALSE	FALSE
PCA:	53891	53348
Index:	50404	50404

Agency	DUNS No.	Amount	Amount	Grand Total:
Clackamas	096992656	\$52,376.00	\$56,391.00	\$108,767.00

January 28, 2021

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Amendment #2 to an Intergovernmental Grant Agreement  
With the State of Oregon for a Term Extension to Complete Services to  
Assist Homeless Shelter Challenges Posed by the COVID-19 Pandemic

<b>Purpose/Outcomes</b>	Approval of amendment for a no-cost time extension
<b>Dollar Amount and Fiscal Impact</b>	No additional dollars are requested or provided under this extension.
<b>Funding Source</b>	Oregon Housing and Community Services Department, Agency General Funds.
<b>Duration</b>	No-cost extension from May 31, 2020 to June 30, 2021.
<b>Previous Board Action</b>	Board approval of original agreement on January 9, 2020, and Amendment # 1 on April 2, 2020.
<b>Strategic Plan Alignment</b>	1. This funding aligns with the Social Services Division’s strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities
<b>Counsel Review</b>	Approved January 13, 2021 (AN).
<b>Procurement Review</b>	1. Was this item processed through Procurement? No 2. If no, provide brief explanation: This is a Revenue amendment. Not subject to Procurement Review.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division (503) 655-8641
<b>Contract No.</b>	State Grant #5135 / H3S#9525

**BACKGROUND:**

The State of Oregon, Housing and Community Services Department, Community Resources Division (OHCS) is granting a no-cost extension to the Social Services Division of the Health, Housing and Human Services Department to complete services to assist in the homeless shelter challenges posed by the COVID-19 pandemic. Remaining funds from the award will be used for non-congregate hotel/motel vouchering for eligible low-income individuals or households experiencing homelessness or at risk of homelessness, impacted by COVID-19. OHCS has requested the amendment be expedited for signature, for reinstatement of award funds.

County Counsel and EOC Command have approved this item.

**RECOMMENDATION:**

Staff recommends the approval of Amendment #2, and that Richard Swift, H3S Director, or his designee, be authorized to sign on behalf of the Clackamas County Board of Commissioners.

Respectfully submitted,



*Richard Swift, H3S Director / for*

Richard Swift, Director  
Health, Housing and Human Services Department



**State of Oregon  
Oregon Housing and Community Services Department  
Shelter Funds – Warming Season  
Grant Agreement  
Amendment No. 2**

This is Amendment No. 2 (the “Amendment”) to the Grant Agreement No. 5135, dated January 14, 2020 (the “Agreement”) executed by and between the State of Oregon, acting by and through its **Housing and Community Services Department**, (“Agency”), and **Clackamas County acting by and through its Department of Health, Housing and Human Services**, a Local Government, (“Grantee”).

**Recitals:** It has now been determined by Agency and Grantee that the Agreement referenced above shall be amended to extend the termination date by Reinstating the Agreement to provide extension of time to expend funds and complete services to assist in the homeless shelter challenges posed by the COVID-19 epidemic.

For good and sufficient consideration including the terms and conditions of this Amendment, the parties agree as follows:

1. **Amendment to Agreement.** The Agreement is hereby amended as follows effective upon signature by all parties and approval required by law. New Language is indicated by **bolding** and **underlining** and deleted language is indicated by **bolding** and **striking** unless a section is replaced in its entirety:

a. Amend Section 3, entitled “EFFECTIVE DATE AND DURATION”, as follows:

Unless terminated or extended, this Agreement covers the period November 1, 2019 through **June 30, 2021** [~~May 31, 2020~~]. The expenditure period for Grant Funds under this Agreement is November 1, 2019 through **June 30, 2021** [~~May 31, 2020~~].

2. Except as expressly amended above, all other terms and conditions of the Agreement, as amended, remain in full force and effect.

3. The parties expressly affirm and ratify the Agreement as herein amended.

4. Grantee certifies that the representations, warranties, and certifications contained in the Agreement are true and correct as of the effective date of this Agreement and with the same effect as though made at the same time of this Amendment.

5. This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when take together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

Certification: By signature on this Amendment, the undersigned hereby certifies for Grantee under penalty of perjury that the undersigned is authorized to act on behalf of Grantee and that Grantee is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, and 323 and elderly rental assistance program under ORS 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

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**SIGNATURE PAGE**

**GRANTEE:**

**Clackamas County acting by and through its Department of Health, Housing and Human Services**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
By (print name): \_\_\_\_\_ Title: \_\_\_\_\_  
Email: \_\_\_\_\_ TIN#: \_\_\_\_\_

**AGENCY:**

**State of Oregon acting by and through its Housing and Community Services Department**

Authorized Signature:



1/6/2021

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Andrea Bell, Director of Housing Stabilization

Date

Reviewed and Approved By:  
Brizna Garcia, per email on 12/29/20

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Brizna Garcia, Contract Administrator

Date

**DEPARTMENT OF JUSTICE**

Approved as to Legal Sufficiency By: Not required per OAR 137-045-050

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**DAN JOHNSON**  
DIRECTOR

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

January 28, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Resolution Declaring the Public Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property for the Jennings Ave: OR99E to Oatfield Rd. Project and Authorizing Good Faith Negotiations and Condemnation Actions**

<b>Purpose/Outcomes</b>	Under ORS 35 and the federal Uniform Act, a local government agency is authorized to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Resolution of Necessity prior to initiating acquisition of the easements or other property rights needed from abutters to the project.
<b>Dollar Amount and Fiscal Impact</b>	The right of way budget for the project is estimated to be \$992,481 and the total amount estimated for this project is \$5,152,316.
<b>Funding Source</b>	Federal Surface Transportation Program (STP) and County Road Funds.
<b>Duration</b>	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
<b>Previous Board Action/Review</b>	1/21/21: BCC approval of Contract Amendment # 1 with Murraysmith Inc. for the Jennings Ave: OR 99E to Oatfield Rd. Project. 01/19/21: Discussion with BCC at issues 10/17/19: BCC approval of a Contract with Murraysmith Inc. for the Jennings Ave: OR 99E to Oatfield Rd Project. 10-11-18: BCC approval of Intergovernmental Agreement for Right of Way Services No. 32338 with Oregon Department of Transportation for the Jennings Ave OR 99E to Oatfield Road Project. 06/29/17: BCC approval of Supplemental Project Agreement No. 31035 with Oregon Department of Transportation for the Jennings Ave. OR 99E to Oatfield Road Project. 01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects.
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? This item supports the DTD Strategic Focus on Safe Roads and Strategic Result of providing safe roads for the "users of the transportation system so they can travel safely and efficiently in Clackamas County." 2. How does this item align with the County's Performance Clackamas goals? This item aligns with "Build a Strong Infrastructure" and "Ensure



	safe, healthy and secure communities” by constructing bicycle lanes and sidewalks.
<b>Counsel Review</b>	Date of Counsel review: 1/7/21 NB
<b>Procurement Review</b>	1. <i>Was the item processed through Procurement?</i> yes <input type="checkbox"/> no <input checked="" type="checkbox"/> This item is a resolution of necessity, required under ORS 35 as a precursor in support of possible condemnation action.
<b>Contact Persons</b>	Sharan LaDuca, DTD Sr. Right of Way Agent @ 503-742-4675 (o) or 503-679-0619 (c)

The County obtained Federal Surface Transportation Program funding to construct improvements along Jennings Avenue from OR99E to Oatfield Road. The improvements include constructing a curb tight sidewalk on the north side of the road and constructing bike lanes on both sides of the road for enhanced bicycle and pedestrian connectivity. The total length of improvements is approximately three quarters (3/4) of a mile (approximately 3860 feet).

In order to construct the improvements as designed, additional rights of way and easements will be required. The project is expected to impact 46 properties abutting the project alignment. The Board has authority to exercise the power of eminent domain under ORS Chapter 35 to acquire rights of way, easements, and fee property by purchase or condemnation proceedings. In accordance with the procedure set forth in that statute, a Resolution of Necessity is required before offers are made for needed rights of way and easements.

The project design team has collected and analyzed data sufficient to choose an alternative and advance the design of the project. The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The design has progressed through the Department of Transportation and Development (the “Department”) project development procedures and the final legal descriptions required for acquisition of the needed rights of way and easements from 46 properties affected by the Project are being developed and reviewed.

The Department shall negotiate in good faith and accordance with all applicable laws, rules, and regulations in an attempt to reach agreement as to the amount of Just Compensation owed each affected property owner. To fairly determine the amount of Just Compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts to make appraisals and appraisal reviews for acquisitions valued over \$10,000 or staff will utilize their own expertise and reliable data sources to prepare Appraisal Waiver Valuations in accordance with applicable law and regulation for acquisitions valued under \$10,000.

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

**RECOMMENDATION:**

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

Respectfully,

*Sharan LaDuca*

Sharan LaDuca  
Senior Right of Way Agent

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

In the Matter Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Jennings Ave: OR99E to Oatfield Road Project



Board Order No. \_\_\_\_\_

*Page 1 of 2*

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on January 28, 2021 and,

It appearing to the Board that the Jennings Ave: OR99E to Oatfield Road Project (the "Project") will construct a curb tight sidewalk on the north side of the road and construct bike lanes on both sides of the road; is consistent with the powers and purposes of County government; and is necessary for public use and the continued growth, safety and welfare of the community; and,

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

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

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

It further appearing to the Board that the acquisition of the necessary rights of way and easements are described as follows: the centerline is described in Exhibit "A"; the width of right-of-way will be in accordance with the Clackamas County Comprehensive Plan and Transportation System Plan; ancillary easements including sign, slope, sidewalk, utility, wetland mitigation, storm water treatment, storm water detention, traffic and safety facility, and temporary construction purposes, together with such incidental additional right-of-way at intersections and due to topography, all as may be reasonably necessary to accommodate project design; and any uneconomic remnants, as determined by appraisal; all being in the public interest in order to commence and complete the Project in a timely manner; and,

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way, easements, and fee property by good faith negotiation, agreement, and purchase or by exercise of the power of eminent domain with condemnation proceedings, when such exercise is deemed necessary to accomplish public purposes for which it has responsibility.

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

In the Matter Declaring the Necessity and Purpose for Acquisition of Rights of Way, Easements, and Fee Property, and Authorizing Good Faith Negotiations and Condemnation Actions for the Jennings Ave: OR99E to Oatfield Road Project



Board Order No. \_\_\_\_\_

*Page 2 of 2*

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

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

IT IS FURTHER ORDERED THAT:

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Tootie Smith, Chair

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

JENNINGS AVENUE:  
OR99E TO OATFIELD ROAD  
JUNE 29, 2020

CLACKAMAS CO. PROJECT NO. 1831-22234  
ROAD CENTERLINE DESCRIPTION

**EXHIBIT A  
CENTERLINE DESCRIPTION OF JENNINGS AVENUE**

A road centerline in a portion of the B. Jennings DLC No. 40 and the James McNary DLC No. 38 in the Northeast One-Quarter, Southeast One-Quarter and Southwest One-Quarter of Section 18 Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and being more particularly described as follows:

**BEGINNING** at the centerline intersection of Jennings Avenue and McLoughlin Boulevard (Hwy 99E), and being herein referenced as Jennings Avenue centerline station 64+36.50, said point also bears South 87°09'29" West, 2,730.73 feet from a 3 1/4" Bronze Disk marking the angle corner on the east line of the B. Jennings DLC No. 40;

Thence North 66°30'13" East, along the centerline of said Jennings Road, 563.50 feet to a 1/2" iron pipe at centerline station 70+00.00, said iron pipe being the intersection with Addie Street;

Thence continuing along said centerline, North 66°30'13" East, 1,660.31 feet to a point on the east line of said B. Jennings DLC No. 40 at centerline station 86+60.31 P.I., said point bears North 42°28'58" West, 1,018.63 feet from said 3 1/4" Bronze Disk marking the angle corner on the east line of the B. Jennings DLC No. 40;

Thence continuing along said centerline, North 46°52'34" East, 934.62 feet to an angle point at centerline station 95+94.93 P.I., said angle point bears North 43°14'45" West, 25.00 feet from a 1/2" iron pipe marking the most westerly corner of Lot 2, Block 2 of "Maywood" recorded as Plat No. 164 in the Clackamas County Plat Records;

Thence continuing along said centerline, North 46°37'55" East, 704.40 feet to an angle point at centerline station 102+99.33 P.I., said point bears North 15°07'11" East, 1,941.00 feet from said 3 1/4" Bronze Disk marking the angle corner on the east line of the B. Jennings DLC No. 40;

Thence North 47°09'05" East, 31.20 feet, more or less, to and terminating at centerline station 103+30.53, in the centerline of Oatfield Road;

**The centerline described above is per Survey Number  
2020-148.**



RENEWAL DATE: 6-30-21



**DAN JOHNSON**  
DIRECTOR

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

January 28, 2021

Board of County Commissioner  
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement between Clackamas County and  
the City of Gladstone for  
Traffic Signal Maintenance and Transportation Engineering Services**

<b>Purpose/Outcomes</b>	Clackamas County is seeking approval to allow Department of Transportation and Development (DTD) staff to cooperatively provide annual traffic signal maintenance and transportation engineering services to City of Gladstone to support City's traffic signals and intelligent transportation system infrastructure.
<b>Dollar Amount and Fiscal Impact</b>	Revenue – Varies between \$500 to \$3,000 annual reimbursements for staff time per traffic signal & roadway flashing beacons.
<b>Funding Source</b>	N/A
<b>Duration</b>	Indefinite or upon 60 days' notice by either party
<b>Previous Board Action</b>	1/19/21– Taken to issues for discussion
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Provide safe, efficient, and well-maintained transportation system throughout the County.</li> <li>2. Build a strong infrastructure and Ensure safe, healthy, and secure communities.</li> </ol>
<b>Counsel Review</b>	Date of Counsel review:11/02/2020, NB
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></li> <li>2. This is an IGA</li> </ol>
<b>Contact Person</b>	Bikram Raghubansh, Senior Traffic Engineer 503-742-4706

**BACKGROUND:**

The City of Gladstone is requesting a formal agreement with Clackamas County to provide transportation engineering and traffic signal maintenance services to support traffic signal timing, and manage the City's traffic signals, flashing beacons, and intelligent transportation system. This agreement will allow Clackamas County to provide annual routine maintenance support to the City owned traffic signals along with transportation engineering support. Support provided by County transportation engineering and traffic signal maintenance staff will be reimbursed by the City for time and material costs.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with the City of Gladstone for the maintenance of traffic signal related assets and transportation engineering services.

Respectfully submitted,

*Bikram Raghubansh*

Bikram Raghubansh  
Senior Traffic Engineer

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY  
AND THE CITY OF GLADSTONE  
FOR TRAFFIC SIGNAL MAINTENANCE AND  
TRANSPORTATION ENGINEERING SERVICES**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("COUNTY"), a corporate body politic, and the City of Gladstone ("CITY"), a corporate body politic, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

**RECITALS**

WHEREAS, authority is conferred upon local governments under ORS 190.010 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; and

WHEREAS, the City needs professional transportation engineering and signal maintenance staff to assist with design review, oversight, and maintenance of the City's new and existing traffic signal(s), intelligent transportation system ("ITS"), and roadway beacons; and

WHEREAS, the County has particular expertise in this area and is able and willing to provide traffic engineering review oversight support, signal timing, and perform signal maintenance for the City on the terms and conditions provided below; and

WHEREAS, this Agreement sets forth the responsibilities of the County for traffic signal maintenance on the City's signals, ITS devices, and roadway beacons at the locations listed in Attachment A; and

WHEREAS, this Agreement sets forth the responsibilities of the City to compensate the County for the work contemplated herein; and

WHEREAS, the City and County believe it is in the public interest to enter into this Agreement to set forth the circumstances under which the City may request the County to provide traffic engineering and traffic signal maintenance support on City roads and streets lying within the boundaries of the City; and

WHEREAS, the City would like to engage the County to perform the work associated with the Project and the County is willing to perform the work;

NOW, THEREFORE, 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:

1. **Term.** This Agreement shall be effective on the last date signed by the Parties below and shall continue thereafter in perpetuity unless terminated earlier by either party consistent with Section 5.
2. **County Obligations.**
  - A. The County shall provide all necessary labor and equipment to perform traffic signal consulting, inspection, configuration, testing, routine and preventive maintenance and repairs on both a regular scheduled and an on-call basis on those facilities identified in Attachment A. Work shall be performed to International Municipal Signal Association (IMSA), Manual on Uniform Traffic Control Devices (MUTCD) with Oregon Supplement and Institute of Transportation Engineers (ITE) industry standards, as well as the State of Oregon guidelines and specifications.



- B. If spare materials and replacement parts are unavailable from City inventory, County shall provide spare materials and replacement parts as necessary to repair a signal that is deemed by the City to create a dangerous condition. Materials and parts supplied by County will be charged to City at current replacement costs with associated shipping and handling fees necessary to replace County inventory.
- C. The County shall assist City with developing a recommended inventory list of spare materials and replacement parts to store/maintain on a regular basis.
- D. The County shall provide engineering review and construction inspection services as requested by City's Public Works Director or designee for new equipment installations not yet identified in Attachment A. New equipment which the Parties agree should be subject to the terms of this Agreement may be added to Attachment A by written amendment to this Agreement, signed by the City's Public Works Director, and the County's Director of the Department of Transportation and Development.
- E. The County shall assign an Oregon State-licensed Professional Civil Engineer (with expertise in Traffic Signal Operation) to assist the City as requested with traffic signal design review, alterations or additions to the traffic signal system, intelligent transportation systems (ITS), roadway flashing beacons, signal timing, review of development proposals with traffic impacts, and other traffic engineering matters. The County's Oregon State-licensed Professional Civil Engineer shall work in close coordination with the City's Public Works Engineering staff for design review oversight on the City's traffic signal, ITS, and roadway beacon projects.
- F. The County shall utilize IMSA Certified Technicians/Electricians when performing traffic signal maintenance, repairs, inspection, configuration, setup, or testing of the City's signal system. Certification level shall be commensurate with the task performed in accordance with IMSA specifications. Technicians/Electricians should be certified in temporary traffic control per IMSA guidelines.
- G. The County shall provide regular scheduled annual testing and maintenance of traffic signal components required for a fully functional traffic signal system, which includes all items shown in Attachment B.
- H. The County shall provide short term temporary traffic control measures as required by the most current Oregon Temporary Traffic Control Handbook and/or state adopted Manual on Uniform Traffic Control Devices ("MUTCD") during routine maintenance activities.
- I. The County shall provide responsive 24-hour on-call service that includes weekends and holidays.
  - i. The County shall respond to any calls involving an emergency, defined below, within four (4) hours, and shall respond to routine calls within forty-eight (48) hours.  
Emergencies are:
    - 1. controller failures;
    - 2. dark signals;
      - a. In the event of a "dark signal," the County will verify with the Utility Service Provider (Gladstone Utility) before responding to ensure the outage is not due to a power outage, and the County will only be obligated to respond if the issue is isolated to the traffic signal. It will be the responsibility of the technician/electrician on duty to evaluate conditions at the site and determine the action necessary, including temporary repairs or traffic control.

3. any red lamp outage;
  4. any intersection in a flashing mode;
  5. any turn lane with only one signal head having an outage (red, yellow, or green);
  6. any equipment involved in a crash; or
  7. any condition involving a signal that the City Public Works Director or City Engineer or their designee declares to be an “emergency” or otherwise requests immediate response (subject to County personnel availability) because the City deems a dangerous condition to exist.
- ii. Except for emergency work described in Section 2(I) and routine maintenance work described in Attachment B, the County will provide a quote to the City outlining the work to be done with estimated labor and material costs in accordance with this Agreement before commencing any work. Prior to any work being started, the quote must be signed by the Public Works Director for the City and the Director of the Department of Transportation and Development for the County, or their respective designees.
  - iii. The County shall not be liable for any claim or action arising out of, or based upon, damages or injuries to persons or property caused by signal issues for which no request for work was made by the City to the County pursuant to the terms of this Section 2.
  - iv. The County shall record all activities performed any time staff is responding to a service call at the site of traffic signal facilities. This can be done on a County-standard form, but should include at minimum:
    1. the time and date the call is received;
    2. the time staff arrives onsite;
    3. who placed the call;
    4. location and condition upon arrival;
    5. necessary equipment, labor and materials;
    6. specifics of repair;
    7. additional repairs still needed;
    8. time site was secured; and
    9. time leaving site.
- J. The County will provide to the City reports on all work performed at the traffic signal(s) as requested by the City. Annual reports shall contain completed maintenance checklists as provided in Attachment B, as well as copies of all work reports, tests, etc. for any activities performed onsite.
- K. The County shall maintain an updated log book in each cabinet for traffic signals that details any and all maintenance or repairs performed.
- L. The County shall provide annual reports that include all of the information in Section 2(J), or earlier upon request of the City.
- M. The County shall submit a detailed monthly invoice to the City with work descriptions, labor costs, and material costs. The County shall invoice the City within sixty (60) days of performing City-authorized work at rates set forth in Attachment C..

N. The County shall submit to City new rates for staff not less than 45 days before the rates set forth in Attachment C change.

**3. City Obligations.**

- A. The City shall compensate the County for the services provided based on the rates of staff in the County Department of Transportation and Development as shown in Attachment C, or as amended as provided herein. All undisputed payments shall be made within thirty (30) days after receipt of County's invoice sent per Section 2(M). City agrees to identify with reasonable detail any disputed fee(s), the reason for the dispute, and any additional information required to explain the basis for the dispute. The City and County shall then work together in good faith to resolve the dispute. If the parties cannot resolve the dispute within 90 days of City's identification of the disputed fee(s), either party may proceed using any available legal remedies.
- B. The City agrees to promptly contact the County any time signal issues are witnessed or reported to ensure timely repairs can be made.
- C. The City shall have the ultimate responsibility to approve the plans in writing for signal upgrading, phasing, timing, and coordination after recommendation by the County.
- D. The City grants County the right to enter into and occupy City rights-of-way for the purpose of performing routine maintenance and emergency repairs of the traffic signal equipment, ITS devices, and roadway beacons owned by the City.
- E. The City shall maintain responsibility for temporary traffic control from the time the signal issue is discovered until such time as the City deems the traffic control unnecessary or County staff arrive and provide traffic control per Section 2(H) or Section 2(I)(ii).
- F. The City's inventory of spare materials and replacement parts for common repairs shall be stored at City's Maintenance Center and shall be accessible to County technicians/electricians during weekday business hours with the assistance of City personnel.

**4. Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. City may terminate this Agreement without cause upon:
  - i. Rate Increase: Within 30 days following County's notice of rate increase to City (rate increase shall not be effective until 45 days following notice to City); or
  - ii. For Convenience: Upon 60 days' notice.
- C. Either the County or the City 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.

- D. The County or the City 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.
- E. The County may terminate this Agreement upon 60 days' notice in the event the County is unable to provide staffing sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to provide services for performance of this Agreement.
- F. Nothing herein shall prevent the Parties from meeting to mutually discuss the Agreement. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- G. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

## 5. **Indemnification.**

- A. Notwithstanding anything to the contrary in Section 2(I)(iii) and subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.
- B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts or omissions of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

## 6. **Party Contacts**

- A. Bikram Raghubansh or his designee will act as liaison for the County for the Project.

### **Contact Information:**

Clackamas County- Department of Transportation and Development  
150 Beavercreek Road  
Oregon City, OR 97045  
(503) 742-4706 or BikramRag@clackamas.us

- B. Jim Whynot or his/her designee will act as liaison for the City for the Project.

### **Contact Information:**

City of Gladstone – Public Works Department  
18595 Portland Avenue

Gladstone, OR 97027  
(503) 656-7957 or [whynot@ci.gladstone.or.us](mailto:whynot@ci.gladstone.or.us)

- C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

## 7. General Provisions

- A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- 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. **Record and Fiscal Control System.** 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 at least three (3) years; 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
- E. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- F. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties and any prior agreements between the Parties affecting the subject matter of this Agreement are hereby terminated. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- M. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) 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.
- N. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

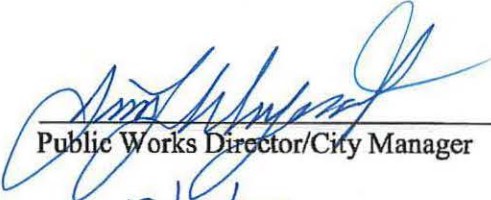
**[Signatures on Following Page]**

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

**Clackamas County**

**City of Gladstone**

\_\_\_\_\_  
Chair, Board of County Commissioners

  
\_\_\_\_\_  
Public Works Director/City Manager

\_\_\_\_\_  
Date

12/10/20  
\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
[NAME], City Attorney



## Attachment A

### County Maintained Traffic Signal and Flasher Beacon Locations

The County agrees to provide preventive maintenance, on-call repair, locates, and traffic engineering consultation services for signal and flasher facilities at the following locations within the City's Jurisdiction:

#### TRAFFIC SIGNALS

All traffic signals, pedestrian signals, vehicle detection, ITS devices, and related facilities at the following locations:

TC ID No.	Device Type	Major Street	Minor Street
05626	Signal	Oatfield Rd	Webster Rd
05625	Signal	82nd Dr	Oatfield Rd
05627	Signal	Portland Ave	Gloucester Rd

#### ROADWAY FLASHING BEACONS

Includes school zone flashers, intersection flashers, and Rectangular Rapid Flashing Beacons (RRFB) at the following locations:

TC ID No.	Device Type	Address/School	Major Street	Minor Street
05624	4-Way Flasher	Intersection	82 <sup>nd</sup> Dr	Arlington St
05628	4-Way Flasher	Intersection	Portland Ave	Dartmouth St
05630 (A)	School Zone Flasher	Kraxberger Middle School	Oatfield Rd	Angus Way
05630 (B)	School Zone Flasher	Kraxberger Middle School	Oatfield Rd	Stonehill St
05630 (C)	School Zone Flasher	Kraxberger Middle School	Webster Rd	South of Ridgewood Dr
05630 (D)	School Zone Flasher	Kraxberger Middle School	Webster Rd	South of Spring Hill Pl
05630 (E)	School Zone Flasher	Kraxberger Middle School	Webster Rd	North of Los Verdes Dr

# Attachment B

## Maintenance Checklists

### CLACKAMAS COUNTY TRAFFIC SIGNALS

#### ANNUAL AERIAL INSPECTION REPORT

INTERSECTION NUMBER:

INTERSECTION NAME:

DATE: / /

ARRIVE:

DEPART:

SIGNAL HEADS			
	OK	ATTN	NA
PAINT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
LENSES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ATTACHMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ALIGNMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BRIGHTNESS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
VISORS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BACKPLATES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
SPANS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
TETHERS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
CAMERAS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
OPTICONS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
TY-RAPS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

PED SIGNALS			
	OK	ATTN	NA
ALIGNMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
HEADS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
BUTTONS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

SIGNS			
	OK	ATTN	NA
GENERAL CONDITION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ILLUMINATION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ATTACHMENT	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

POLES			
	OK	ATTN	NA
CONDITION	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
HAND HOLE COVERS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
T-CANS	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
LUMINAIRES	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

MISCELLANEOUS DETAILS:

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ELECTRICIAN: \_\_\_\_\_

ELECTRICIAN: \_\_\_\_\_



Jackson County

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

Transportation Maintenance Division

### Annual Cabinet Inspections

Traffic Signal #: TC-

Date:  /  /

Location:   
Owner:

Arrive:   
Depart:

Controller Mfg:  Model:   
CMU Mfg:  Model: 210 S/N:    
New CMU Mfg:  Model: 210 S/N:    
VAC:  VDC:  AMPS:

	OK	FAIL	N/A	
Controller Timing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Timing Sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Cabinet Print	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Intersection As-Built	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Verify Inputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Verify Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Flasher Outputs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Locks	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Thermostat/Fan Test	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Change Air Filter(s)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Cleaned/Lubed Cabinet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Remove/Cleaned Graffiti	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____
Diode Matrix Sheet	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	note: _____

Conflict Monitor Test   note: \_\_\_\_\_

Miscellaneous Details:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Electrician \_\_\_\_\_

Electrician \_\_\_\_\_

## Attachment C

### Schedule of Rates

Clackamas County  
Traffic Engineering & Traffic Signal Maintenance  
Labor Rates

2020/21 Fiscal Year

Employee Class Description	Group	Labor Rate
Engineering Supervisor	Engineering	\$180.26
Civil Engineer, Senior	Engineering	\$167.00
Civil Engineer	Engineering	\$140.46
Civil Engineer, Associate	Engineering	\$120.26
Engineering Tech 3	Engineering	\$98.65
Engineering Tech 2	Engineering	\$77.69
Engineering Intern	Engineering	\$24.96
Traffic Signal Electrician	Maintenance	\$123.18





**DAN JOHNSON**  
DIRECTOR

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

January 28, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Supplemental Project Agreement No. 34029 with  
Oregon Department of Transportation (ODOT) for the  
OR 211 at Canby Marquam Highway Project**

<b>Purpose/Outcome</b>	Clackamas County Department of Transportation and Development (DTD) is seeking approval for this intergovernmental agreement with Oregon Department of Transportation (ODOT) for the OR 211 at Canby Marquam Highway Project.
<b>Dollar Amount and Fiscal Impact</b>	County is not contributing funds toward the design or construction of project. The project will be financed by the State at an estimated cost of \$723,700. County will be responsible for power costs associated with intersection lighting at the intersection, which is estimated to be less than \$100 annually.
<b>Funding Source</b>	NA
<b>Duration</b>	Effective upon date it is fully executed and approved as required by applicable law
<b>Previous Board Action</b>	1/19/21: Discussion item at issues
<b>Strategic Plan Alignment</b>	1. This project will install safety countermeasures that are proven to reduce crashes, which is consistent with the DTD/Traffic Safety goal of reducing the number of fatalities and serious injury crashes to zero by 2035. 2. The project will result in enduring safety infrastructure, which is consistent with the goals of (a) building a strong infrastructure and (b) ensuring safe, healthy and secure communities.
<b>Counsel Review</b>	Reviewed and approved by Counsel on 12/16/2020
<b>Procurement Review</b>	1. Was this item processed through Procurement? NO 2. If no, provide brief explanation: This is an intergovernmental agreement and procurement review is not applicable.
<b>Contact Person</b>	Christian Snuffin, Senior Traffic Engineer 503-680-5623

**BACKGROUND:**

Clackamas County is requesting to go into agreement with ODOT for the OR 211 at Canby Marquam Highway Project. ODOT is constructing and installing safety improvements on roads approaching and at the intersection of OR 211 and Canby Marquam Highway (north of the intersection) and S. Kropf Road (south of the intersection). The Project includes the following:

- a. Constructing a 2" grind/inlay, installing transverse rumble strips, and installing a through route activated warning system on Canby Marquam north of the intersection;
- b. Installing static solar powered flashers on stop signs on S. Kropf Road south of the intersection; and
- c. Installing intersection illumination, enhanced intersection warning signs, and a through route activated warning system on OR 211.

The Project will be financed by State at an estimated cost of \$723,700.00 in federal and state funds. County is not contributing funds to the Project.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement with ODOT for the OR 211 at Canby Marquam Highway Project.

Respectfully submitted,

*Christian Snuffin*

Christian Snuffin  
Senior Traffic Engineer/Project Manager

**INTERGOVERNMENTAL AGREEMENT**  
**OR 211 at Canby Marquam Highway**  
**Clackamas County**  
Key No. 20142

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 366.576, ODOT may enter into agreements with any county, city, town or road district for the construction, reconstruction, improvement, repair or maintenance of any road, highway or street, with mutually agreed upon terms and conditions, for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Oregon Route (OR) 211 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Canby Marquam Highway and S. Kropf Road are a part of the county road system under the jurisdiction and control of Agency. Each Party maintains the roadway system under its control.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. State is constructing and installing safety improvements on roads approaching and at the intersection (known as Hamricks Corner) of OR 211 and Canby Marquam Highway (north of the intersection) and S. Kropf Road (south of the intersection), hereinafter referred to as "Project". The Project includes the following:
  - a. constructing a 2" grind/inlay, installing transverse rumble strips, and installing a through route activated warning system on Canby Marquam north of the intersection;
  - b. Installing static solar powered flashers on stop signs on S. Kropf Road south of the intersection; and
  - c. Installing intersection illumination, enhanced intersection warning signs, and a through route activated warning system on OR 211.



The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. The Project will be financed by State at an estimated cost of \$723,700.00 in federal and state funds. The estimate for the total Project cost is subject to change. Agency is not contributing funds to the Project.
3. The term of this Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement.

### **AGENCY OBLIGATIONS**

1. Agency grants State the right to enter onto Agency right of way for performance of duties as set forth in this Agreement.
2. Agency shall be responsible for 100 percent of power costs associated with the intersection illumination installed as a part of this Project. Agency shall require the power company to send invoices directly to Agency.
3. **Americans with Disabilities Act Compliance:**
  - a. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA. This includes, but is not limited to, Agency ensuring that:
    - i. Pedestrian access is maintained as required by the ADA,
    - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
    - iii. Agency, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
    - iv. Any future alteration work on Project or Project features complies with the ADA requirements in effect at the time the future alteration work is performed, and
    - v. Applicable permitting and regulatory actions are consistent with ADA requirements.

- b. Maintenance obligations in this section shall survive termination of this Agreement.
4. Agency, by execution of this Agreement, gives consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by this Agreement.
5. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
6. Agency's Project Manager for this Project is Joe Marek, Transportation Safety Program Manager, Clackamas County, 150 Beaver Creek Road, Oregon City, Oregon 97045; phone: 503-742-4705; email: [JoeMar@clackamas.us](mailto:JoeMar@clackamas.us), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **STATE OBLIGATIONS**

### **1. Americans with Disabilities Act Compliance:**

When the project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the State shall:

- a. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- b. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
- c. At Project completion, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>.

2. State shall remain responsible for maintenance of OR 211. Project safety improvements will be maintained by State.
3. State shall be responsible for 100 percent of maintenance costs, but not power costs, associated with the intersection illumination installed as a part of this Project.
4. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
5. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
6. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on OR 211.
7. State's Project Manager for this Project is Paul Welch, Project Manager, ODOT Region 2 Area 3, 455 Airport Road SE, Building A, Salem, Oregon 97303; phone: (503) 986-2702; email: [Paul.Welch@odot.state.or.us](mailto:Paul.Welch@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to perform any of the provisions called for by this Agreement within the time specified herein or any extension thereof.
  - b. If 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.

- c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  4. 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 Agency 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.
  5. With respect to a Third Party Claim for which State is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency 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.
  6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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.

7. 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.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) 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.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key Number 20142) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

**SIGNATURE PAGE TO FOLLOW**

**CLACKAMAS COUNTY**, by and through  
its elected officials

By \_\_\_\_\_  
Chair

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL**  
(If required in Agency's process)

By \_\_\_\_\_  
Agency Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Joe Marek,  
Transportation Safety Program Manager  
Clackamas County  
150 Beaver Creek Road,  
Oregon City, OR 97045  
phone: 503-742-4705  
email: [JoeMar@clackamas.us](mailto:JoeMar@clackamas.us)

**State Contact:**

Paul Welch, Project Manager  
ODOT Region 2 Area 3  
455 Airport Road SE, Building A  
Salem, OR 97303  
phone: (503) 986-2702  
email: [Paul.Welch@odot.state.or.us](mailto:Paul.Welch@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Deputy Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Traffic Roadway Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 (Northwest) Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 2 Project Delivery Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
Area 3 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**EXHIBIT A**  
**Project Location Sketch Maps**





**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Baker Rock Crushing Co.,  
to provide Aggregate Rock for Clackamas County**

<b>Purpose/ Outcomes</b>	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Baker Rock Crushing Co, for aggregate rock
<b>Dollar Amount and Fiscal Impact</b>	\$75,000 annually.  Total contract value through expiration is \$225,000.
<b>Funding Source</b>	DTD Transportation Maintenance, 215-7433-00-424412
<b>Duration</b>	October 31, 2023
<b>Previous Board Action</b>	1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
<b>Counsel Review</b>	November 18, 2020; AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
<b>Contact Person</b>	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
<b>Contract Number</b>	3487

**BACKGROUND:**

The Department of Transportation and Development has a continual need for aggregate rock. Aggregate rock is used on a variety of projects including shouldering, digouts, ditching, catch basins, guardrail and pothole patching. These materials are essential to constructing, preserving, and rehabilitating roads and bridges. Clackamas County does stockpile rock at various locations throughout the County. One of the biggest expenses on a project is equipment and labor. By having resources such as rock vendors throughout the County, the County can cut back on trucking costs by using vendors that are closest to our job sites. By having these contracts in place, the County is able to plan ahead where to get the rock needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site.

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS 279B and LCRB Rules on October 14, 2020. Bids were publically opened October 28, 2020. The County received two (2) proposals





**DAN JOHNSON**

DIRECTOR

from Baker Rock Crushing Co, and Turin and Sons Inc. Both vendors were chosen and were awarded the Contract through October 31, 2023.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 Progress Park, Clackamas County, OR 97045

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Baker Rock Crushing Co., for the aggregate rock.

Respectfully submitted,

*Terry Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY**  
**GOODS AND SERVICES CONTRACT**  
**Contract #3487**

This Goods and Services Contract (this "Contract") is entered into between **Baker Rock Crushing Co.** ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Aggregate Rock.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFQ# 2020-82 Aggregate Rock, issued on October 14, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A", and the Contractor's Quote attached and hereby incorporated by reference as Exhibit "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Paul Runyan.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$75,000.00** and the total Contract compensation shall not exceed **\$225,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

**IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

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

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this

Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and County’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warranty shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due

to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS



279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.


**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

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

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

Baker Rock Crushing Co.  
21880 SW Farmington Road  
Beaverton, OR 97007

Clackamas County

 11/17/2020  
Authorized Signature Date

\_\_\_\_\_  
Chair Date

KEITH E. PEAL VICEPRESIDENT MKTG. & SALES  
Name / Title (Printed)

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

060464-11  
Oregon Business Registry #

Approved as to Form:

DBC/Oregon  
Entity Type / State of Formation

 11/18/20  
County Counsel Date

**EXHIBIT A**  
**RFQ #2020-82 Aggregate Rock**  
**Issued October 14, 2020**



**Procurement Division**  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045  
(503) 742-5444 (Office)

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**REQUEST FOR QUOTES (RFQ) #2020-82**

Issue Date: October 14, 2020

Project Name:	Aggregate Rock Products		
Quote Due Date/Time:	October 28, 2020, 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	<a href="mailto:twhitley@clackamas.us">twhitley@clackamas.us</a>

**SUBMIT QUOTES VIA EMAIL TO [PROCUREMENT@CLACKAMAS.US](mailto:PROCUREMENT@CLACKAMAS.US)  
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE  
“AGGREGATE ROCK” IN THE SUBJECT LINE**

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**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-82-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us). If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

**2. SCOPE**

The purpose of this RFQ is to obtain competitive market prices on various sizes and types of rock products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

**Price Adjustments:** The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

**Price adjustments will be executed by way of an amendment signed by both the County and the vendor.**

**Price adjustments must be sent to the project manager as identified within the final contract.**

**Ordering Process:** Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor will invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

### Requirements:

- A. Measurement: Measurement of rock materials will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of rock products, loaded, FOB supplier's site.
- C. Materials: Rock products supplied shall conform to the State of Oregon's Standard Specifications for Construction 2021 Edition. Rock products not meeting the required specification will be rejected.

### 3. SAMPLE CONTRACT

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

### 4. QUOTE

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form;

### 5. EVALUATION

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

**CLACKAMAS COUNTY CERTIFICATIONS**  
**RFQ #2020-82**

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

**SECTION II. NON-DISCRIMINATION**

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

**SECTION III. CONFLICT OF INTEREST**

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION**

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: BAKER ROCK RESOURCES Date: 10/22/2020  
Signature: *Keith E. Peal* Title: VICE PRESIDENT MKTG. & SALES  
Name: KEITH E. PEAL Telephone: 503-642-2531  
Email: KEITHPEAL@BAKER-ROCK.COM OR CCB # (if applicable): 05232

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_

Oregon Business Registry Number: 060464-11

**CLACKAMAS COUNTY  
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

**QUOTE PREPARATION**

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

### **QUOTE EVALUATION AND AWARD**

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.



**RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET  
COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>3" -0 CRUSHED ROCK</b>	\$
<b>1" -0 CRUSHED ROCK</b>	\$
<b>1 ½" -0 CRUSHED ROCK</b>	\$
<b>¾" -0 CRUSHED ROCK</b>	\$
<b>¼" -0 CRUSHED ROCK</b>	\$
<b>4"-2" CRUSHED DRAIN</b>	\$
<b>3"-12" CRUSHED ROCK</b>	\$
<b>RIP RAP</b>	\$
<b>PIT RUN</b>	\$
<b>FILL SAND</b>	\$
<b>WINTER SAND ¼-.10 CLEAN CRUSHED AGGREGATE</b>	\$
<b>MASON SAND</b>	\$
<b>TOP SOIL</b>	\$
<b><u>ADDITIONAL PRODUCTS AVAILABLE</u></b>	
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

**EXHIBIT B**  
**CONTRACTOR'S QUOTE**

RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET

COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
3" -0 CRUSHED ROCK	\$ 9.00
1" -0 CRUSHED ROCK	\$ —
1 1/2" -0 CRUSHED ROCK	\$ 9.00
3/4" -0 CRUSHED ROCK	\$ 9.25
1/4" -0 CRUSHED ROCK	\$ —
4"-2" CRUSHED DRAIN	\$ —
3"-12" CRUSHED ROCK	\$ 14.50
RIP RAP	\$ —
PIT RUN	\$ 9.00
FILL SAND	\$ —
WINTER SAND 1/4-.10 CLEAN CRUSHED AGGREGATE	\$ —
MASON SAND	\$ —
TOP SOIL	\$ —
<u>ADDITIONAL PRODUCTS AVAILABLE</u>	
	\$
6x3 Crushed Rock	\$ 10.50
	\$
1 1/2" x 3/4" Crushed Drain	\$ 10.50
	\$
3/4" x 1/4" Crushed Drain	\$ 14.00
	\$

\* All prices are f.o.b @  
 Baker Rock Resources Molalla Quarry.  
 33999 S. Ball Rd.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/23/2020

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Scott Insurance (Knoxville, TN) 10100 Global Way Knoxville TN 37932	<b>CONTACT NAME:</b> Carla Cook <b>PHONE (A/C, No, Ext):</b> 865-684-1795 <b>FAX (A/C, No):</b> 434-455-8884 <b>E-MAIL ADDRESS:</b> ccook@scottins.com
<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Baker Rock Resources Baker Rock Crushing Co. Baker Rock Resources West, LLC 21880 SW Farmington Rd Beaverton OR 97007	<b>INSURER A:</b> Hartford Fire Ins Company (A+) <b>NAIC #</b> 19682 <b>INSURER B:</b> The Charter Oak Fire Insurance Company (A++) <b>25615</b> <b>INSURER C:</b> Great American Insurance Company (A+) <b>16691</b> <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>

**COVERAGES      CERTIFICATE NUMBER: 722935503      REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Eq. to CG 0001 <input checked="" type="checkbox"/> Contr. Liab. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			14UENOE0004	4/1/2020	4/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY			14UENOE0005	4/1/2020	4/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			TUJ 5499088	11/1/2019	11/1/2020	EACH OCCURRENCE \$ 20,000,000 AGGREGATE \$ 20,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	14WEOE0003	4/1/2020	4/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Equipment Floater			QT-630-7554L342	11/1/2019	11/1/2020	Leased/ Rented Deductible Valuation      675,000 5,000 ACV

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 Re: RFQ #2020-82; Aggregate Rock Products

<b>CERTIFICATE HOLDER</b>  Clackamas County Procurement Division Public Services Building 2051 Kaen Road Oregon City OR 97045	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Jim Turin and Sons, Inc.,  
dba Mt. Hood Rock Products, Inc.,  
to provide Aggregate Rock for Clackamas County**

<b>Purpose/ Outcomes</b>	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Jim Turin and Sons, Inc., dba Mt. Hood Rock Products, Inc., for aggregate rock
<b>Dollar Amount and Fiscal Impact</b>	\$75,000 annually.  Total contract value through expiration is \$225,000.
<b>Funding Source</b>	DTD Transportation Maintenance, 215-7433-00-424412
<b>Duration</b>	October 31, 2023
<b>Previous Board Action</b>	1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
<b>Counsel Review</b>	November 23, 2020; AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
<b>Contact Person</b>	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
<b>Contract Number</b>	3489

**BACKGROUND:**

The Department of Transportation and Development has a continual need for aggregate rock. Aggregate rock is used on a variety of projects including shouldering, digouts, ditching, catch basins, guardrail and pothole patching. These materials are essential to constructing, preserving, and rehabilitating roads and bridges. Clackamas County does stockpile rock at various locations throughout the County. One of the biggest expenses on a project is equipment and labor. By having resources such as rock vendors throughout the County, the County can cut back on trucking costs by using vendors that are closest to our job sites. By having these contracts in place, the County is able to plan ahead where to get the rock needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site.

**PROCUREMENT PROCESS:**



**DAN JOHNSON**

DIRECTOR

This project was advertised in accordance with ORS 279B and LCRB Rules on October 14, 2023. The project was publicly opened October 28, 2023. The County received two (2) proposals from Baker Rock Crushing Co, and Turin and Sons Inc. Both vendors were chosen and were awarded the Contract through October 31, 2023.

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Jim Turin and Sons, Inc., dba Mt. Hood Rock Products, Inc., for the aggregate rock.

Respectfully submitted,

*Terry Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY  
GOODS AND SERVICES CONTRACT  
Contract #3489**

This Goods and Services Contract (this "Contract") is entered into between **Jim Turin and Sons, Inc., dba Mt. Hood Rock Products, Inc.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Aggregate rock.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFQ# 2020-82 Aggregate Rock, issued on October 14, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A", and the Contractor's Quote attached and hereby incorporated by reference as Exhibit "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Paul Runyan.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$75,000.00** and the total Contract compensation shall not exceed **\$225,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

**IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

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

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this

Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and County's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warranty shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, 22, and 27, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall

inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s)

which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this

Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

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

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

Jim Turin and Sons, Inc. *DBA: Mt. Hood Rock Products*  
✓ 36775 Industrial Way  
Sandy, OR 97055

Clackamas County

  
\_\_\_\_\_  
Authorized Signature Date

\_\_\_\_\_  
Chair Date

*Dan J Turin, President*  
\_\_\_\_\_  
Name / Title (Printed)

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

112195-16  
\_\_\_\_\_  
Oregon Business Registry #

Approved as to Form:

DBC/Oregon  
\_\_\_\_\_  
Entity Type / State of Formation

  
\_\_\_\_\_  
County Counsel 11/23/20 Date

**EXHIBIT A**  
**RFQ #2020-82 Aggregate Rock**  
**Issued October 14, 2020**





**Procurement Division**  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045  
(503) 742-5444 (Office)

---

**REQUEST FOR QUOTES (RFQ) #2020-82**

Issue Date: October 14, 2020

Project Name:	Aggregate Rock Products		
Quote Due Date/Time:	October 28, 2020, 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	<a href="mailto:twhitley@clackamas.us">twhitley@clackamas.us</a>

**SUBMIT QUOTES VIA EMAIL TO [PROCUREMENT@CLACKAMAS.US](mailto:PROCUREMENT@CLACKAMAS.US)  
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE  
“AGGREGATE ROCK” IN THE SUBJECT LINE**

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**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-82-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us). If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

**2. SCOPE**

The purpose of this RFQ is to obtain competitive market prices on various sizes and types of rock products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

**Price Adjustments:** The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

**Price adjustments will be executed by way of an amendment signed by both the County and the vendor.**

**Price adjustments must be sent to the project manager as identified within the final contract.**

**Ordering Process:** Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor will invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

### **Requirements:**

- A. Measurement: Measurement of rock materials will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of rock products, loaded, FOB supplier's site.
- C. Materials: Rock products supplied shall conform to the State of Oregon's Standard Specifications for Construction 2021 Edition. Rock products not meeting the required specification will be rejected.

### **3. SAMPLE CONTRACT**

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

### **4. QUOTE**

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form;

### **5. EVALUATION**

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

**CLACKAMAS COUNTY CERTIFICATIONS**  
**RFQ #2020-82**

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

**SECTION II. NON-DISCRIMINATION**

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

**SECTION III. CONFLICT OF INTEREST**

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION**

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Jim Turin & Sons, Inc. Date: 10.27.2020  
Signature: [Signature] Title: President  
Name: Dan J Turin Telephone: 503.449.5237  
Email: danturin@jps.net OR CCB # (if applicable): 53420

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_

Oregon Business Registry Number: 0230324-2

**CLACKAMAS COUNTY  
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

**QUOTE PREPARATION**

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

### **QUOTE EVALUATION AND AWARD**

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET  
COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>3" -0 CRUSHED ROCK</b>	\$
<b>1" -0 CRUSHED ROCK</b>	\$
<b>1 ½" -0 CRUSHED ROCK</b>	\$
<b>¾" -0 CRUSHED ROCK</b>	\$
<b>¼" -0 CRUSHED ROCK</b>	\$
<b>4"-2" CRUSHED DRAIN</b>	\$
<b>3"-12" CRUSHED ROCK</b>	\$
<b>RIP RAP</b>	\$
<b>PIT RUN</b>	\$
<b>FILL SAND</b>	\$
<b>WINTER SAND ¼-.10 CLEAN CRUSHED AGGREGATE</b>	\$
<b>MASON SAND</b>	\$
<b>TOP SOIL</b>	\$
<b><u>ADDITIONAL PRODUCTS AVAILABLE</u></b>	
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

**EXHIBIT B**  
**CONTRACTOR'S QUOTE**

**RFQ #2020-82 AGGREGATE ROCK PRODUCTS FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
3" -0 CRUSHED ROCK	\$ 12.35
1" -0 CRUSHED ROCK	\$ 12.75
1 ½" -0 CRUSHED ROCK	\$ no bid
¾" -0 CRUSHED ROCK	\$ no bid
¼" -0 CRUSHED ROCK	\$ no bid
4"-2" CRUSHED DRAIN	\$ no bid
3"-12" CRUSHED ROCK	\$ no bid
RIP RAP	\$ 40.00
PIT RUN #2	\$ 9.40
FILL SAND	\$ no bid
WINTER SAND ¼-.10 CLEAN CRUSHED AGGREGATE	\$ no bid
MASON SAND	\$ no bid
TOP SOIL	\$ no bid
<b><u>ADDITIONAL PRODUCTS AVAILABLE</u></b>	
screenings	\$ 6.00
	\$
	\$
	\$
	\$
	\$
	\$
	\$





**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Lakeside Industries, Inc.,  
to provide Asphaltic Concrete for Clackamas County**

<b>Purpose/ Outcomes</b>	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Lakeside Industries, Inc., for asphaltic concrete.
<b>Dollar Amount and Fiscal Impact</b>	\$700,000 annually.  Total contract value through expiration is, \$2,100,000.
<b>Funding Source</b>	Transportation Maintenance, 215-7433-00-424411
<b>Duration</b>	October 31, 2023
<b>Previous Board Action</b>	1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
<b>Counsel Review</b>	November 30, 2020; AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
<b>Contact Person</b>	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
<b>Contract Number</b>	3484

**BACKGROUND:**

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.



**DAN JOHNSON**  
DIRECTOR

**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**DEVELOPMENT SERVICES BUILDING**

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS 279B and LCRB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Lakeside Industries, Inc., for the asphaltic concrete.

Respectfully submitted,

*Terry Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY  
GOODS AND SERVICES CONTRACT  
Contract #3484**

This Goods and Services Contract (this “Contract”) is entered into between **Lakeside Industries, Inc.**, (“Contractor”), and Clackamas County, a political subdivisions of the State of Oregon (“County”) on behalf of Department of Transportation and Development for the purposes of providing Asphaltic concrete.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit “A.” This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit “A,” and the Contractor’s Quote, attached and hereby incorporated by reference as Exhibit “B.” Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County’s Representative for this contract is: Paul Runyan.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

**IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

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

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this

Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and County’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warranty shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due



to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS

279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

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

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

Lakeside Industries, Inc.  
6505 226<sup>th</sup> Place SE, Suite# 200  
Issaquah, WA 98027

Clackamas County

\_\_\_\_\_  
Authorized Signature

11/30/2020  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

RON S. GREEN REGIONAL MANAGER  
\_\_\_\_\_  
Name / Title (Printed)

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

366469-82  
\_\_\_\_\_  
Oregon Business Registry #

Approved as to Form:

FBC/Washington  
\_\_\_\_\_  
Entity Type / State of Formation

\_\_\_\_\_  
County Counsel

11/30/20  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**  
**RFQ #2020-81 Asphaltic Concrete**  
**Issued October 13, 2020**



**Procurement Division**  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045  
(503) 742-5444 (Office)

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**REQUEST FOR QUOTES (RFQ) #2020-81**

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	<a href="mailto:twhitley@clackamas.us">twhitley@clackamas.us</a>

**SUBMIT QUOTES VIA EMAIL TO [PROCUREMENT@CLACKAMAS.US](mailto:PROCUREMENT@CLACKAMAS.US)  
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE  
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

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**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us). If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

**2. SCOPE**

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

**Price Adjustments:** The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

**Price adjustments will be executed by way of an amendment signed by both the County and the vendor.**

**Price adjustments must be sent to the project manager as identified within the final contract.**

**Ordering Process:** Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

**Requirements:**

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

**3. SAMPLE CONTRACT**

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

**4. QUOTE**

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

**5. EVALUATION**

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

**CLACKAMAS COUNTY CERTIFICATIONS**  
**RFQ #2020-81**

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

**SECTION II. NON-DISCRIMINATION**

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

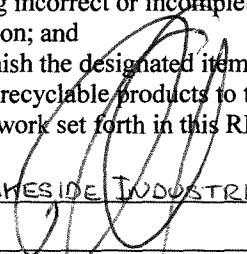
**SECTION III. CONFLICT OF INTEREST**

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION**

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: LAKESIDE INDUSTRIES, INC. Date: 10/20/2020  
Signature:  Title: REGIONAL MANAGER  
Name: RON S. GREEN Telephone: (503) 222-6421  
Email: ron.green@lakesideindustries.com OR CCB # (if applicable): 108542

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_

Oregon Business Registry Number: 366469-82

**CLACKAMAS COUNTY  
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

**QUOTE PREPARATION**

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral



or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

### **QUOTE EVALUATION AND AWARD**

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>LEVEL 3, ¾" DENSE</b>	<b>\$</b>
<b>LEVEL 3, ½" DENSE</b>	<b>\$</b>
<b>LEVEL 3, 3/8" DENSE</b>	<b>\$</b>
<b>LEVEL 2, ½" DENSE</b>	<b>\$</b>
<b>DRIVEWAY MIX (200#C)</b>	<b>\$</b>
<b>COLD MIX</b>	<b>\$</b>
<b>EZ STREET – VOC FREE PICK UP</b>	<b>\$</b>
<b>EZ STREET – VOC FREE DELIVERED</b>	<b>\$</b>

**EXHIBIT B**  
**CONTRACTOR'S QUOTE**

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>LEVEL 3, 3/4" DENSE</b>	\$ 56 <sup>00</sup>
<b>LEVEL 3, 1/2" DENSE</b>	\$ 56 <sup>00</sup>
<b>LEVEL 3, 3/8" DENSE</b>	\$ 61 <sup>00</sup>
<b>LEVEL 2, 1/2" DENSE</b>	\$ 58 <sup>00</sup>
<b>DRIVEWAY MIX (200#C)</b>	\$ 61 <sup>00</sup>
<b>COLD MIX</b>	\$
<b>EZ STREET - VOC FREE PICK UP</b>	\$ 115 <sup>00</sup>
<b>EZ STREET - VOC FREE DELIVERED</b>	\$ 130 <sup>00</sup>



**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Jim Turin and Sons dba, Mt. Hood Asphalt Products, Inc.,  
to provide Asphaltic Concrete for Clackamas County**

<b>Purpose/ Outcomes</b>	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Jim Turin and Sons dba Mt. Hood Asphalt Products, Inc. for asphaltic concrete.
<b>Dollar Amount and Fiscal Impact</b>	\$700,000 annually. Total contract value through expiration is, \$2,100,000.
<b>Funding Source</b>	Transportation Maintenance, 215-7433-00-424411
<b>Duration</b>	October 31, 2023
<b>Previous Board Action</b>	1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
<b>Counsel Review</b>	November 30, 2020; AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
<b>Contact Person</b>	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
<b>Contract Number</b>	3481

**BACKGROUND:**

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel



**DAN JOHNSON**  
DIRECTOR

back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.

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

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS 279B and LCRB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Jim Turin and Sons dba Mt. Hood Asphalt Products, Inc., for the asphaltic concrete.

Respectfully submitted,

*Terry Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY  
GOODS AND SERVICES CONTRACT  
Contract #3481**

This Goods and Services Contract (this "Contract") is entered into between **Mt. Hood Asphalt Products, Inc.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Asphaltic concrete.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Paul Runyan.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

**IV. CONTRACT PROVISIONS**

**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

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

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this

Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and County’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warranty shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due

to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS

279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

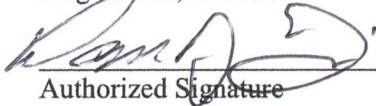
**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

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

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

Mt. Hood Asphalt Products, Inc.  
62285 Boulder Creek Lane  
Brightwood, OR 97011

Clackamas County


 11-24-20  
Authorized Signature Date Chair Date

Dan J Turin President  
Name / Title (Printed) Recording Secretary

167848-11  
Oregon Business Registry #

Approved as to Form:

DBC/Oregon  
Entity Type / State of Formation

 11/30/20  
County Counsel Date

**EXHIBIT A**  
**RFQ #2020-81 Asphaltic Concrete**  
**Issued October 13, 2020**





**Procurement Division**  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045  
(503) 742-5444 (Office)

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**REQUEST FOR QUOTES (RFQ) #2020-81**

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	<a href="mailto:twhitley@clackamas.us">twhitley@clackamas.us</a>

**SUBMIT QUOTES VIA EMAIL TO [PROCUREMENT@CLACKAMAS.US](mailto:PROCUREMENT@CLACKAMAS.US)  
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE  
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

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**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us). If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

**2. SCOPE**

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

**Price Adjustments:** The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

**Price adjustments will be executed by way of an amendment signed by both the County and the vendor.**

**Price adjustments must be sent to the project manager as identified within the final contract.**

**Ordering Process:** Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

**Requirements:**

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

**3. SAMPLE CONTRACT**

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

**4. QUOTE**

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

**5. EVALUATION**

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

**CLACKAMAS COUNTY CERTIFICATIONS**  
**RFQ #2020-81**

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

**SECTION II. NON-DISCRIMINATION**

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

**SECTION III. CONFLICT OF INTEREST**

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION**

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Jim Turin & Sons, Inc. Date: 10.27.2020  
Signature: [Signature] Title: President  
Name: Dan J Turin Telephone: 503.464.5237  
Email: danturin@jps.net OR CCB # (if applicable): 53420

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_

Oregon Business Registry Number: 0230324-2

**CLACKAMAS COUNTY  
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

**QUOTE PREPARATION**

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

### **QUOTE EVALUATION AND AWARD**

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>LEVEL 3, ¾" DENSE</b>	<b>\$</b>
<b>LEVEL 3, ½" DENSE</b>	<b>\$</b>
<b>LEVEL 3, 3/8" DENSE</b>	<b>\$</b>
<b>LEVEL 2, ½" DENSE</b>	<b>\$</b>
<b>DRIVEWAY MIX (200#C)</b>	<b>\$</b>
<b>COLD MIX</b>	<b>\$</b>
<b>EZ STREET – VOC FREE PICK UP</b>	<b>\$</b>
<b>EZ STREET – VOC FREE DELIVERED</b>	<b>\$</b>

**EXHIBIT B**  
**CONTRACTOR'S QUOTE**

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
LEVEL 3, 3/4" DENSE	\$ 53.00
LEVEL 3, 1/2" DENSE	\$ 53.00
LEVEL 3, 3/8" DENSE	\$ no bid
LEVEL 2, 1/2" DENSE	\$ 54.00
DRIVEWAY MIX (200#C)	\$ 55.00
COLD MIX	\$ no bid
EZ STREET - VOC FREE PICK UP	\$ no bid
EZ STREET - VOC FREE DELIVERED	\$ no bid





**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with Baker Rock Crushing Co.,  
to provide Asphaltic Concrete for Clackamas County**

<b>Purpose/ Outcomes</b>	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and Baker Rock Crushing Co, for asphaltic concrete.
<b>Dollar Amount and Fiscal Impact</b>	\$700,000 annually.  Total contract value through expiration is, \$2,100,000.
<b>Funding Source</b>	Transportation Maintenance, 215-7433-00-424411
<b>Duration</b>	October 31, 2023
<b>Previous Board Action</b>	1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
<b>Counsel Review</b>	November 30, 2020; AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
<b>Contact Person</b>	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
<b>Contract Number</b>	3480

**BACKGROUND:**

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.



**DAN JOHNSON**  
DIRECTOR

**PROCUREMENT PROCESS:**

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

This project was advertised in accordance with ORS 279B and LCRB Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and Baker Rock Crushing Co., for the asphaltic concrete.

Respectfully submitted,

*Terry Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY  
GOODS AND SERVICES CONTRACT  
Contract #3480**

This Goods and Services Contract (this "Contract") is entered into between **Baker Rock Crushing Co.**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development, for the purposes of providing Asphaltic concrete.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Paul Runyan.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

**IV. CONTRACT PROVISIONS**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence

and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

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

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's

insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for

any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and County’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, 22 and 27, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the



event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the

contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

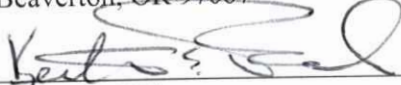
**30. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

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

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

Baker Rock Crushing Co.  
21880 SW Farmington Blvd  
Beaverton, OR 97007

Clackamas County

 11/30/2020  
\_\_\_\_\_  
Authorized Signature Date

\_\_\_\_\_  
Chair Date

KEITH E. REAL VICE President MKTG.  
Name / Title (Printed) *7/21/20*

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

060464-11  
Oregon Business Registry #

Approved as to Form:

DBC/Oregon  
Entity Type / State of Formation

 11/30/20  
\_\_\_\_\_  
County Counsel Date

**EXHIBIT A**  
**RFQ #2020-81 Asphaltic Concrete**  
**Issued October 13, 2020**



**Procurement Division**  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045  
(503) 742-5444 (Office)

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**REQUEST FOR QUOTES (RFQ) #2020-81**

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	<a href="mailto:twhitley@clackamas.us">twhitley@clackamas.us</a>

**SUBMIT QUOTES VIA EMAIL TO [PROCUREMENT@CLACKAMAS.US](mailto:PROCUREMENT@CLACKAMAS.US)  
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE  
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

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**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us). If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

**2. SCOPE**

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

**Price Adjustments:** The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

**Price adjustments will be executed by way of an amendment signed by both the County and the vendor.**

**Price adjustments must be sent to the project manager as identified within the final contract.**

**Ordering Process:** Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

**Requirements:**

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

**3. SAMPLE CONTRACT**

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

**4. QUOTE**

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

**5. EVALUATION**

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

**CLACKAMAS COUNTY CERTIFICATIONS**  
**RFQ #2020-81**

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

**SECTION II. NON-DISCRIMINATION**

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.


**SECTION III. CONFLICT OF INTEREST**

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION**

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Baker Rock Resources  
Signature:   
Name: Keith Peal  
Email: keithpeal@baker-rock.com

Date: 10/26/2020  
Title: Vice President, Marketing and Sales  
Telephone: 503-642-2531  
OR CCB # (if applicable): 158803 & 03838

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_

Oregon Business Registry Number: 264313-87

**CLACKAMAS COUNTY  
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

**QUOTE PREPARATION**

1. **QUOTE FORMAT:** Quotes must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral



or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

### **QUOTE EVALUATION AND AWARD**

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>LEVEL 3, 3/4" DENSE</b>	<b>\$</b>
<b>LEVEL 3, 1/2" DENSE</b>	<b>\$</b>
<b>LEVEL 3, 3/8" DENSE</b>	<b>\$</b>
<b>LEVEL 2, 1/2" DENSE</b>	<b>\$</b>
<b>DRIVEWAY MIX (200#C)</b>	<b>\$</b>
<b>COLD MIX</b>	<b>\$</b>
<b>EZ STREET – VOC FREE PICK UP</b>	<b>\$</b>
<b>EZ STREET – VOC FREE DELIVERED</b>	<b>\$</b>

**EXHIBIT B**  
**CONTRACTOR'S QUOTE**



Baker Rock Resources  
21880 SW Farmington Blvd.  
Beaverton, OR. 97007  
503-642-2531

October 27, 2020

Clackamas County, Procurement Division

2051 Kaen Road

Oregon City, OR 97045

Attn: Tralee Whitley

RE: RFQ #2020-81

Tralee-

Attached you will find Baker Rock Resource's submission for Asphaltic Concrete, Quote #2020-81.

As you may be aware, Baker Rock Resources has been an asphalt concrete supplier throughout the Portland Metro area for over 40 years. We have extensive hot mix and cold mix production experience, and we produce to ODOT specifications. Our yard in Beaverton is open Monday through Friday, 7:00 a.m. to 4:30 p.m.

Currently, we supply cold mix, in bulk, to Tillamook County, the City of Tigard, the City of the Dalles, and the City of Springfield to name a few. Our product is a proprietary, "No VOC" cold mix asphalt that we produce at our plant in Beaverton Oregon. The product is a suitable alternative to EZ Street/EZ Street No VOC cold mix, and we are happy to supply any additional information required to confirm this.

We appreciate the opportunity to present this quote.

Regards,

A handwritten signature in blue ink, appearing to read 'Shane Weston', is written over a light blue horizontal line.

Shane Weston

Asphalt Division Manager, Baker Rock Resources

[shaneweston@baker-rock.com](mailto:shaneweston@baker-rock.com)

Cell: 503-680-9366

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET  
COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>LEVEL 3, ¼" DENSE</b>	<b>\$45.50</b>
<b>LEVEL 3, ½" DENSE</b>	<b>\$45.50</b>
<b>LEVEL 3, 3/8" DENSE</b>	<b>\$52.00</b>
<b>LEVEL 2, ½" DENSE</b>	<b>\$47.00</b>
<b>DRIVEWAY MIX (200#C)</b>	<b>\$47.00</b>
<b>COLD MIX</b>	<b>\$89.50</b>
<b>EZ STREET – VOC FREE PICK UP</b>	<b>\$89.50</b>
<b>EZ STREET – VOC FREE DELIVERED</b>	<b>\$105.00</b>



**DAN JOHNSON**  
DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Goods and Services Contract with South County Asphalt, LLC, to provide Asphaltic Concrete for Clackamas County**

<b>Purpose/ Outcomes</b>	Execution of a contract between the Department of Transportation and Development, Transportation Maintenance, and South County Asphalt, LLC. for asphaltic concrete.
<b>Dollar Amount and Fiscal Impact</b>	\$700,000 annually. Total contract value through expiration is, \$2,100,000.
<b>Funding Source</b>	Transportation Maintenance, 215-7433-00-424411
<b>Duration</b>	October 31, 2023
<b>Previous Board Action</b>	1/12/21: Discussion with the board at issues
<b>Strategic Plan Alignment</b>	1. How does this item align with your department's Strategic Business Plan goals? The public's increasing expectation that the transportation system will be safer and support a healthier community. 2. a) Build a strong infrastructure. b) Ensure safe, healthy and secure communities. c) Grow a vibrant economy.
<b>Counsel Review</b>	November 30, 2020; AN
<b>Procurement Review</b>	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/> 2. If no, provide brief explanation:
<b>Contact Person</b>	Paul Runyan, Transportation Maintenance Supervisor - 503-650-3265
<b>Contract Number</b>	3485

**BACKGROUND:**

The Department of Transportation and Development has a continuous need for asphaltic concrete for the use of surface repairs, it is what is commonly known as asphalt and comes in a variety of densities. It is used on a variety of projects when repairing the road surface. Year round it is used for pothole patching – and it can be hot or cold treatments, depending on the weather. During the summer construction season is when it can be used the most. Weather conditions are better and the County is performing a larger variety of construction projects that use asphaltic concrete in small areas such as skip patches where they are repairing small areas on up to large paving programs. By having resources such as asphaltic concrete vendors throughout the County, they can cut back on trucking costs by using vendors that are closest to their job sites. By having these contracts in place, for the larger projects the County is able to plan ahead where to get the asphaltic concrete needed at the best price and at the shortest distance for the trucks to travel back and forth between rock pit and job site. For the smaller projects, trucks are able to replenish their supply and continue working.



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

**PROCUREMENT PROCESS:**

This project was advertised in accordance with ORS 279B and LORC Rules on October 13, 2020. Bids were publically opened October 27, 2020. The County received four (4) proposals from Baker Rock Crushing Co, Jim Turin and Sons, Inc, Lakeside Industries, and South County Asphalt. All four (4) vendors were chosen and were awarded the Contract through October 31, 2023.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve and execute the Contract between the Department of Transportation and Development and South County Asphalt, LLC, for the asphaltic concrete.

Respectfully submitted,

*Terry Abbott*

Terry S. Abbott  
Transportation Operations Manager  
Transportation Maintenance Division

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**CLACKAMAS COUNTY  
GOODS AND SERVICES CONTRACT  
Contract #3485**

This Goods and Services Contract (this "Contract") is entered into between **South County Asphalt, LLC**, ("Contractor"), and Clackamas County, a political subdivisions of the State of Oregon ("County") on behalf of Department of Transportation and Development for the purposes of providing Asphaltic concrete.

**I. TERM**

This Contract shall become effective upon signature of both parties and shall remain in effect until **October 31, 2023**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

**II. SCOPE OF WORK**

This Contract covers the Scope of Work as described in RFQ# 2020-81 Asphaltic Concrete, issued on October 13, 2020, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence: this Contract, Exhibit "A," and the Contractor's Quote, attached and hereby incorporated by reference as Exhibit "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: Paul Runyan.

**III. COMPENSATION**

1. **PAYMENT.** The County agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **\$700,000.00** and the total Contract compensation shall not exceed **\$2,100,000.00**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: 902 Abernathy Road, Oregon City, Oregon 97045.

**IV. CONTRACT PROVISIONS**



**1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

**3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

**4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

**5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

**7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, 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 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

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

**9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

**10. INSURANCE.** Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

**A. COMMERCIAL GENERAL LIABILITY**

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

**B. AUTOMOBILE LIABILITY**

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

**C.** Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**D.** If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

**E.** If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this Contract.

**F.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

**G.** Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

**11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this

Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and County’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warranty shall be deemed a material breach of this Contract.

**15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, 21, and all other terms and conditions which by their context are intended to survive termination of this Contract.

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

**17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

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

**20. TERMINATION.** This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

**21. REMEDIES.** (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due

to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

**22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.

**23. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**24. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence under this Contract.

**25. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

**26. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**27. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

**28. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS

279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**29. INSPECTIONS.** Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

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





**EXHIBIT A**  
**RFQ #2020-81 Asphaltic Concrete**  
**Issued October 13, 2020**



**Procurement Division**  
Public Services Building  
2051 Kaen Road  
Oregon City, OR 97045  
(503) 742-5444 (Office)

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**REQUEST FOR QUOTES (RFQ) #2020-81**

Issue Date: October 13, 2020

Project Name:	Asphaltic Concrete		
Quote Due Date/Time:	October 27, 2020 , 2:00 PM		
Procurement Analyst:	Tralee Whitley	Phone:	503-742-5453
		Email:	<a href="mailto:twhitley@clackamas.us">twhitley@clackamas.us</a>

**SUBMIT QUOTES VIA EMAIL TO [PROCUREMENT@CLACKAMAS.US](mailto:PROCUREMENT@CLACKAMAS.US)  
OR MAIL/HAND DELIVERY TO THE ABOVE ADDRESS**

**PLEASE NOTE: EMAIL SUBMISSIONS SHOULD HAVE  
“ASPHALTIC CONCRETE” IN THE SUBJECT LINE**

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**1. ANNOUNCEMENT AND SPECIAL INFORMATION**

Quoters are required to read, understand, and comply with all information contained within this Request for Quotes (“RFQ”). All quotes are binding upon Quoter for sixty (60) days from the Quote Due Date/Time. Quotes received after the Quote Due Date/Time may not be considered. If authorized in the RFQ and resulting contract, travel and other expense reimbursement will only be reimbursed in accordance with the Clackamas County Travel Reimbursement Policy in effect at the time the expense is incurred. The Policy may be found at <https://www.clackamas.us/finance/terms.html>.

RFQ Documents can be downloaded from ORPIN at the following address: <http://orpin.oregon.gov/open.dll/welcome>, Document No. C01010-2020-81-20. Prospective Quoters will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Quoters are responsible for obtaining any addenda or clarifying questions from ORPIN.

Quotes are to be emailed to [procurement@clackamas.us](mailto:procurement@clackamas.us). If mailed or hand delivered, the quote must be submitted to Clackamas County Procurement Services – Attention George Marlton, County Procurement Officer at 2051 Kaen Road, Oregon City, Oregon, 97045.

All questions regarding this RFQ are to be directed to the Procurement Analyst named above. Quoters may not communicate with County employees or representatives about the RFQ during the procurement process until the Procurement office has notified Quoters of the selected Quoter. Communication in violation of this restriction may result in rejection of a Quoter.

**2. SCOPE**

The purpose of this RFQ is to obtain competitive market prices on various asphaltic concrete products, loaded, FOB supplier’s site. The County Transportation Maintenance Division (or other County departments) will use the resulting price agreement for purchases on an as needed basis.

The County may award multiple contracts as a result of this RFQ. If multiple contracts are awarded, the County will generally use the firm with the best price, closest to the project site, in the sole determination by the County.

**Price Adjustments:** The resulting contract(s) will be for a period of November 1, 2020 (or the date the contract(s) is executed) through October 31, 2023. Contractor(s) may request pricing changes (increase or decrease) twice a year between April 1-10 and November 1-10 of each year of the

contract. The County will not consider requests not received during the above referenced request periods. The County's intent is to ensure that it is paying competitive market rates for products.

**Price adjustments will be executed by way of an amendment signed by both the County and the vendor.**

**Price adjustments must be sent to the project manager as identified within the final contract.**

**Ordering Process:** Once a contract is established, the County will periodically contact the contractor to fulfill orders. Contractor may invoice the County monthly for all sales. The County reserves the right to pay by credit card at the point of sale (without additional fee or charge). All invoices shall be NET 30 and subject to ORS 293.462. At the time of order, the County representative shall indicate the point of contact for invoicing.

**Requirements:**

- A. Measurement: Measurement of asphaltic concrete will be by the ton based upon weigh tickets from certified scales except in situations that the County gives prior approval for the use of another measurement standard.
- B. Prices: Prices quoted will be for purchases of asphaltic concrete, loaded, FOB supplier's site.
- C. Materials: Asphaltic concrete supplied shall conform to the State of Oregon's Standard Specifications for Highway Construction, 2018 (or better) Edition. Asphaltic concrete not meeting the required specification will be rejected.

**3. SAMPLE CONTRACT**

Submission of a Quote in response to this RFQ indicates Quoter's willingness to enter into a contract containing substantially the same terms of the below referenced contract, which can be found at: <https://www.clackamas.us/finance/terms.html>, with the below indicated requirements. No action or response to the sample contract is required under this RFQ. The applicable sample contract is the:

Goods & Services Contract (unless checked, item does not apply)

The following insurance requirements will be applicable.

- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$500,000 per occurrence for Bodily Injury and Property Damage.

**4. QUOTE**

Quotes should be short and concise with the following information:

- A. Company experience in providing such materials;
- B. Company hours;
- C. Company locations (list if multiple sites);
- D. Prices – **Complete Fee Sheet Attached; and**
- E. Clackamas County Certifications Form.

**5. EVALUATION**

The quote received from the lowest responsive responsible Quoter will be awarded a contract. The "lowest responsive responsible Quoter" is the lowest Quoter who has substantially complied with all requirements of the Request for Quote and who can be expected to deliver promptly and perform reliably in the determination of Clackamas County.

**CLACKAMAS COUNTY CERTIFICATIONS**  
**RFQ #2020-81**

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

**SECTION I. OREGON TAX LAWS**

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

**SECTION II. NON-DISCRIMINATION**

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

**SECTION III. CONFLICT OF INTEREST**

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

**SECTION IV. COMPLIANCE WITH SOLICITATION**

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: SOUTH COUNTY Date: 10/23/2020  
Signature: DAVID ELSNER Title: MEMBER  
Name: DAVID ELSNER Telephone: (971) 235-9792  
Email: DAVE@EAGLE-ELSNER.COM OR CCB # (if applicable): N/A

Business Designation (check one):

Corporation  Partnership  Sole Proprietorship  Non-Profit  Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: \_\_\_\_\_

Oregon Business Registry Number: 142704-90

**CLACKAMAS COUNTY  
INSTRUCTIONS TO QUOTERS**

Quotes are subject to the applicable provisions and requirements of the Clackamas County Local Contract Review Board Rule C-047-0270 (Intermediate Procurements) and Oregon Revised Statutes.

**QUOTE PREPARATION**

1. **QUOTE FORMAT:** Quotes must be must be submitted as indicated in the RFQ.
2. **CONFORMANCE TO RFQ REQUIREMENTS:** Quotes must conform to the requirements of the RFQ. Unless otherwise specified, all items quoted are to be new, unused and not remanufactured in any way. Any requested attachments must be submitted with the quote and in the required format. Quote prices must be for the unit indicated on the quote. Failure to comply with all requirements may result in quote rejection.
3. **ADDENDA:** Only documents issued as addenda by Clackamas County serve to change the RFQ in any way. No other directions received by the Quoter, written or verbal, serve to change the RFQ document. NOTE: IF YOU HAVE RECEIVED A COPY OF THE RFQ, YOU SHOULD CONSULT ORPIN (<http://orpin.oregon.gov/open.dll/welcome>) TO ENSURE THAT YOU HAVE NOT MISSED ANY ADDENDA OR ANNOUNCEMENTS. QUOTERS ARE NOT REQUIRED TO RETURN ADDENDUMS WITH THEIR QUOTE. HOWEVER, QUOTERS ARE RESPONSIBLE TO MAKE THEMSELVES AWARE OF, OBTAIN AND INCORPORATE ANY CHANGES MADE IN ANY ADDENDA ISSUED, AND TO INCORPORATE ANY CHANGES MADE BY ADDENDUM INTO THEIR FINAL QUOTE. FAILURE TO DO SO MAY, IN EFFECT, MAKE THE QUOTER'S QUOTE NON-RESPONSIVE, WHICH MAY CAUSE THE QUOTE TO BE REJECTED.
4. **USE of BRAND or TRADE NAMES:** Any brand or trade names used by Clackamas County in the specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Quoters may submit quotes for substantially equivalent products to those designated unless the RFQ provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to approval by Clackamas County.
5. **PRODUCT IDENTIFICATION:** Quoters must clearly identify all products quoted. Brand name and model or number must be shown. Clackamas County reserves the right to reject any quote when the product information submitted with the quote is incomplete.
6. **FOB DESTINATION:** Unless specifically allowed in the RFQ, ***QUOTE PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges included in the Quote.***
7. **DELIVERY:** Delivery time must be shown in number of calendar days after receipt of purchase order.
8. **EXCEPTIONS:** Any deviation from quote specifications, or the form of sample contract referenced in this RFQ, may result in quote rejection at County's sole discretion.
9. **SIGNATURE ON QUOTE:** Quotes must be signed by an authorized representative of the Quoter. Signature on a quote certifies that the quote is made without connection with any person, firm or corporation making a quote for the same goods and/or services and is in all respects fair and without collusion or fraud. Signature on a quote also certifies that the Quoter has read and fully understands all quote specifications, and the sample contract referenced in this RFQ (including insurance requirements). No consideration will be given to any claim resulting from quoting without comprehending all requirements of the RFQ.
10. **QUOTE MODIFICATION:** Quotes, once submitted, may be modified in writing before the time and date set for quote closing. Any modifications should be signed by an authorized representative, and state that the new document supersedes or modifies the prior quote. Quoters may not modify quotes after quote closing time.
11. **QUOTE WITHDRAWALS:** Quotes may be withdrawn by request in writing signed by an authorized representative and received by Clackamas County prior to the Quote Due Date/Time. Quotes may also be withdrawn in person before the Quote Due Date/Time upon presentation of appropriate identification.
12. **QUOTE SUBMISSION:** Quotes may be submitted by returning to Clackamas County Procurement Division in the location designated in the introduction of the RFQ; however, no oral

or telephone quotes will be accepted. Envelopes, or e-mails containing Quotes should contain the RFQ Number and RFQ Title.

### **QUOTE EVALUATION AND AWARD**

- 1. PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, Clackamas County generally will not completely review or analyze quotes which fail to comply with the requirements of the RFQ or which clearly are not the best quotes, nor will Clackamas County generally investigate the references or qualifications of those who submit such quotes. Therefore, neither the return of a quote, nor acknowledgment that the selection is complete shall operate as a representation by Clackamas County that an unsuccessful quote was complete, sufficient, or lawful in any respect.
- 2. DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.
- 3. CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the RFQ.
- 4. PAYMENT:** Quotes which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.
- 5. INVESTIGATION OF REFERENCES:** Clackamas County reserves the right to investigate references and or the past performance of any Quoter with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. Clackamas County may postpone the award or execution of the contract after the announcement of the apparent successful Quoter in order to complete its investigation. Clackamas County reserves the right to reject any quote or to reject all quotes at any time prior to Clackamas County's execution of a contract if it is determined to be in the best interest of Clackamas County to do so.
- 6. METHOD OF AWARD:** Clackamas County reserves the right to make the award by item, groups of items or entire quote, whichever is in the best interest of Clackamas County.
- 7. QUOTE REJECTION:** Clackamas County reserves the right to reject any and all quotes.
- 8. QUOTE RESULTS:** Quoters who submit a quote will be notified of the RFQ results. Awarded quote files are public records and available for review by submitting a public records request or by appointment.

**RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET**  
**COMPANY NAME:**

<b>MATERIAL/DESCRIPTION</b>	<b>COST PER TON</b>
<b>LEVEL 3, 3/4" DENSE</b>	<b>\$</b>
<b>LEVEL 3, 1/2" DENSE</b>	<b>\$</b>
<b>LEVEL 3, 3/8" DENSE</b>	<b>\$</b>
<b>LEVEL 2, 1/2" DENSE</b>	<b>\$</b>
<b>DRIVEWAY MIX (200#C)</b>	<b>\$</b>
<b>COLD MIX</b>	<b>\$</b>
<b>EZ STREET – VOC FREE PICK UP</b>	<b>\$</b>
<b>EZ STREET – VOC FREE DELIVERED</b>	<b>\$</b>

**EXHIBIT B**  
**CONTRACTOR'S QUOTE**



RFQ #2020-81 ASPHALTIC CONCRETE FEE SHEET  
COMPANY NAME:

MATERIAL/DESCRIPTION	COST PER TON
LEVEL 3, 3/4" DENSE	\$ 47.50
LEVEL 3, 1/2" DENSE	\$ 48.00
LEVEL 3, 3/8" DENSE	\$ 51.00
LEVEL 2, 1/2" DENSE	\$ 49.00
DRIVEWAY MIX (200#C)	\$
COLD MIX *	\$ 105.00
EZ STREET - VOC FREE PICK UP *	\$ 105.00
EZ STREET - VOC FREE DELIVERED*	\$ 125.00

\* QPR - VOC FREE  
PER ATTACHED

South County Asphalt, LLC. is located at 24420 S. Highway 99E in Canby, Oregon. We have been producing ODOT-spec asphaltic concrete pavement since 2019 at this location. We are open Monday – Saturday during construction season from 6:00 to 5:00 p.m. We can open Sundays and nights for additional cost if needed.

# QPR<sup>®</sup>

QUALITY PAVEMENT REPAIR

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County  
ASPHALT

AVAILABLE FOR BULK PURCHASE AT

**South County Asphalt**

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Dave Elsner - (971) 235-4571

# NORTH AMERICA'S #1 COLD MIX

- The #1 High Performance Pavement Repair Material
- No Mixing or Tacking Required
- Material Remains Workable from -5°F to 105°F
- Works in Water Filled Potholes
- Specifically Blended for the Climate in the Northwest
- **Our No VOC Formula Provides 0% Surface Water Runoff Toxicity & Meets all EPA Regulated SWPPP & NPDES Requirements**
- Guaranteed **PERMANENT**



For SDS, Material Specs and Installation Tips contact us at: [QPRUSA.com](http://QPRUSA.com) • (800) 388-4338 • Sales at [QPRCHA.com](http://QPRCHA.com)  
For technical questions and FREE samples call: Don Nathan - (865) 599-0105



January 28, 2021

Board of County Commissioners  
 Clackamas County

Members of the Board:

Approval of a Memorandum of Agreement among the U.S. Army Corps of Engineers, The Oregon State Historic Preservation Office, and The Advisory Council on Historic Preservation for Clackamas County to Act as Fund Manager for the Jennings Lodge Camp Meeting Site and Retreat Center

<b>Purpose/Outcomes</b>	For Clackamas County to award grants from a mitigation fund established to support documentation, development of narrative materials, construction interpretative signage, websites, public outreach, preservation of similar NRHP-eligible camp sites in Oregon, restoration of NRHP-eligible churches in Oregon, or other similar tasks to educate and foster understanding of this historic site and its role in Jennings Lodge history.
<b>Dollar Amount and Fiscal Impact</b>	\$185,000
<b>Funding Source</b>	Funding provided by the mitigation funds to be managed under the MOA. No County General Funds are involved.
<b>Duration</b>	Effective upon signature and terminates three years from acceptance of Management Plan by USACE, SHPO, and ACHP.
<b>Previous Board Action</b>	Issues Presentation on January 12, 2021
<b>Counsel Review</b>	January 14, 2021, JM
<b>Procurement Review</b>	The Agreement is for the County to act as Fund Manager and to award qualifying grants from the fund. Not subject to procurement review.
<b>Strategic Plan Alignment</b>	1) Aligns with the BCS strategic priority of providing essential economic development, public spaces, and community enrichment services to residents, businesses, visitors and partners so they can thrive and invest in a healthy, vibrant, and prosperous Clackamas County. 2) Aligns with the BCC strategic priority of Building Public Trust through Good Government.
<b>Contact Person</b>	Laura Zentner, Director, Bus. and Community Services - (503) 742-4351 Jeffrey D. Munns, Assistant County Counsel – (503) 742-5984

**BACKGROUND:** In 2014, Lennar Development purchased a 16 acre piece of property in the Jennings Lodge Area for development (72 single family housing units now under construction). Prior to the development, the Jennings Lodge community filed several LUBA appeals and actions to stop removal of historic structures and trees. The community was ultimately unsuccessful but did receive an agreement for Lennar to pay \$185,000 in mitigation for historical preservation related to the site and similar locations in this area.

In 2018, an agreement (MOA) between the U.S. Army Corp of Engineers (USACE), the Oregon State Historic Preservation Office (SHPO), and the Advisory Council on Historic Preservation (ACHP) specified how the funds were to be managed, distributed and used. The agreement was signed by Lennar, USACE, SHPO, ACHP, and others. Clackamas County was not a party to this original agreement but was later asked to act as the manager of the \$185,000. Clackamas County will be allowed to retain \$18,500 (10%) for acting as fund manager.

The purpose of the fund is to award grants from a mitigation fund established to support documentation, development of narrative materials, construction interpretative signage, development of websites, public outreach, preservation of similar NRHP-eligible camp sites in Oregon, restoration of NRHP-eligible churches in Oregon, or other similar tasks to educate and foster understanding of this historic site and its role in Jennings Lodge history. Business and Community Services has already drafted a Fund Management Plan attached to this staff report.

**RECOMMENDATION:** Business and Community Services respectfully requests that the Board of County Commissioners approve and sign this Memorandum of Agreement for Clackamas County to Act as Fund Manager for the Jennings Lodge Camp Meeting Site and Retreat Center Education and Preservation Fund.

Respectfully submitted,

*Laura Zentner*

Laura Zentner  
Director, Business and Community Services

**MEMORANDUM OF AGREEMENT**

**AMONG**

**THE U.S. ARMY CORPS OF ENGINEERS,**

**THE OREGON STATE HISTORIC PRESERVATION OFFICE,**

**AND**

**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION**

**SUBJECT:** Resolution of Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center (JLCMSRC), Clackamas County, Oregon, USACE Reference NWP-2016-495.

- 1. WHEREAS**, the United States Army Corps of Engineers (USACE) administers permits pursuant to Section 10 of the Rivers and Harbors Act, 33 U.S.C § 403; and
- 2. WHEREAS**, Lennar Northwest (Lennar) is the permit applicant and current owner of the historic property known as the JLCMSRC in Clackamas County, Oregon; and
- 3. WHEREAS**, Lennar plans to construct an outfall structure to service the Jennings Lodge Estates subdivision that involves work in waters of the United States, an action that requires a permit pursuant to Section 10 of the Rivers and Harbors Act, and which constitutes an undertaking under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108; and
- 4. WHEREAS**, pursuant to 36 CFR part 800, regulations implementing Section 106 of the NHPA, and 33 CFR part 325, Appendix C, Processing of Department of the Army (DA) Permits: Procedures for Protection of Historic Places, the USACE is required to take into account the effects of Federally permitted undertakings on properties included in or eligible for inclusion in the National Register of Historic Places (NRHP) prior to the issuance of permits for the undertaking and to consult with the State Historic Preservation Officer; and
- 5. WHEREAS**, the USACE defined the undertaking's area of potential effects (APE) as the entire project area consisting of the removal and staging areas (see Attachment A); and
- 6. WHEREAS**, the USACE determined that the JLCMSRC, a historic district with 17 contributing structures and three groves of trees, is eligible for listing in the NRHP, and the undertaking, which includes the removal of these 17 structures and three groves of trees, will result an adverse effect to the historic district; and
- 7. WHEREAS**, the USACE consulted with the Oregon State Historic Preservation Officer (SHPO) pursuant to 36 CFR part 800 and 33 CFR part 325, Appendix C, and the SHPO concurred with the USACE regarding the eligibility of the historic property for listing in the

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

NRHP, and the determination of adverse effect upon the JLCMSRC, pursuant to 36 CFR § 800.4(b) and 36 CFR § 800.5(a), respectively; and

**8. WHEREAS**, the USACE reached out to the Confederated Tribes of the Grand Ronde, Confederated Tribes of the Warm Springs Indian Reservation, Confederated Tribes of the Siletz, the Confederated Tribes of the Cowlitz, Jennings Lodge CPO (JLCPO), Gladstone Historical Society, Clackamas Historical Society, Friends of Jennings Lodge, the Oak Lodge History Detectives (OLHD), Restore Oregon, and the National Trust for Historic Preservation (NTHP) about this undertaking; and

**9. WHEREAS**, the JLCPO, the OLHD, Restore Oregon, and the NTHP expressed a desire to consult on this Section 106 Memorandum of Agreement (MOA); and

**10. WHEREAS**, the USACE acknowledges its continued responsibility to engage in meaningful consultation with tribes (e.g., Executive Order 13175, 54 U.S.C. § 302706(b), and the November 5, 2009 Presidential Memorandum on Tribal Consultation) throughout the process of carrying out the stipulations of this agreement; and

**11. WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), USACE notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**12. WHEREAS**, the USACE consulted with Lennar, the primary owner, regarding the effects of the undertaking on historic properties and invited them to sign this MOA as an invited signatory pursuant to 36 CFR § 800.6(c)(2); and

**13. WHEREAS**, based on their stated interest, the USACE consulted with the JLCPO, the OLHD, Restore Oregon, and the NTHP, and invited them to participate in this MOA as concurring parties pursuant to 36 CFR § 800.6(c)(3); and

**14. WHEREAS**, the JLCPO, the OLHD and the NTHP do not agree that this MOA is sufficient to mitigate for the demolition of the JLCMSRC; in response Lennar is providing \$50,000 additional funding (as reflected in this MOA under Stipulation V.) to help relocate the Friesen Chapel; and

**15. WHEREAS**, Consulting Parties for the purpose of this MOA include USACE, SHPO, ACHP, Lennar, JLCPO, OLHD, Restore Oregon, and NTHP; and

**NOW, THEREFORE**, the USACE, the SHPO and the ACHP agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## STIPULATIONS

The USACE, in coordination with Lennar, shall ensure that the following stipulations are implemented:

- I. Where applicable (for example, Stipulations II., IV.a., IV.d., possibly VI.), work pursuant to this MOA will be developed by or under the supervision of a person or persons with experience in historic preservation and meeting the minimum professional qualifications for Historic Architect, Architectural Historian or Historian included in the Secretary of the Interior's Professional Qualification Standards, 48 Fed. Reg. 44716 (Sept. 29, 1983). Stipulations involving educational elements will receive the input of individuals with demonstrated experience in curriculum planning or public education. If in doubt, the SHPO in consultation with the USACE has the authority to determine if the work requires a historic preservation professional, and if a given individual is qualified to conduct the work.
  
- II. Within one year of execution of the MOA, Lennar will complete an Oregon State Level Documentation of the JLCMSRC district and its contributing elements. The narrative will emphasize the landscape as the historical inspiration for JLCMSRC's development and discuss the restorative and spiritual value of the setting to the faith-based facility. The documentation will lay out the historic context, landscape history, and architectural history of the site, and will include photographs (and index) depicting the landscape, representative trees and vegetation, layout, circulation patterns, and any other supporting features or characteristics, to include a vegetation plan denoting the locations of buildings among the trees, supplemented by individual narrative records for each building or structure, to include a separate photo index and black and white photographs of each building showing interior and exterior views, details, and context within the landscape. Specific documentation will include no less than:
  - a. Architectural descriptions of no less than 500 words for all contributing buildings and features of JLCMSRC to include the following information:
    - (1) The physical context of the buildings and how they relate to the surrounding environment or property as a whole,
    - (2) The historical context of JLCMSRC concerning the relationship of the buildings or structures to the historical development of the surrounding area and to trends in local and national histories,
    - (3) Specific historical data, including the dates of initial planning and development, any changes in plan and evolution, individuals such as architects or developers associated with the site, and associated historical events, and
    - (4) A physical description of the site according to the original plan, how it has changed over time, and how it is at present.
  - b. A history of JLCMSRC of no less than 500 words that includes at minimum the dates of construction, names of architects or builders, ownership, and changes to the property.
  - c. A bibliography of sources cited and consulted.



SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

- d. A map of the JLCMSRC site on the appropriate United States Geological Survey or similar map.
- e. A scale site plan that includes all NRHP-contributing buildings, structures, and tree groves at the JLCMSRC property.
- f. Scale floor plans of JLCMSRC of all buildings specified by SHPO.
- g. Digital photographs adhering to National Register digital photograph standards published by the National Park Service. Each building, structure, and landscape features should have no less than eight photos. The photographic documentation will be completed and sent to SHPO for review of adequacy and completeness prior to any construction or changes to the JLCMSRC. Photographs will include:
  - (1) General or environmental views of JLCMSRC to illustrate setting, landscape, adjacent buildings, and roadways,
  - (2) The front façade of each building on site,
  - (3) Perspective view, front and one side of each building on site,
  - (4) Perspective view, rear and opposing side of each building on site,
  - (5) Detail, front entrance and/or a typical doorway,
  - (6) Exterior details of architectural interest, and
  - (7) Interior views to capture spatial relationships, typical spaces, and any decorative or character defining features including hallways and stairways.
  - (8) Perspective view of the Cathedral of Trees from at least two views showing each of the three groves within the context of the overall District.
  - (9) Detail views of the Cathedral of Trees showing specific, notable groves or individual trees. This stipulation does not require the photography of each individual tree.
  - (10) A photo location map.
- h. Relevant archival materials, including original architectural drawings or maps, brochures, historic photos, newspaper clippings, or other archival items of interest related to the property. See Stipulation III. and IV.b. for archival material disposition.
- i. Consulting Parties will be provided a reasonable opportunity to review and comment on the documentation and Lennar will take the comments into consideration.
- j. Lennar can begin demolition (assuming Lennar has relevant permitting and this MOA has been executed) once the SHPO has accepted that the photographs taken in support of the documentation required under this Stipulation are adequate and the SHPO so notifies Lennar and the Consulting Parties. It is anticipated that archival/historical documentation will be completed during construction.
- k. Lennar will supply one hard copy and one digital CD copy of the complete documentation to the SHPO to fulfill this stipulation.

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

III. Lennar will supply one hard copy and one digital CD copy of finalized digital historical records acquired in its research on the JLCMSRC (including Stipulation II. material) to the Consulting Parties within 30 days of completion of Stipulation II. Additional copies of this documentation will be provided to the Clackamas County Historical Society, the Clackamas County Public Library at Oak Lodge, the Oregon Historical Society and the University of Oregon Knight Library Special Collections. If the listed repositories cannot accept the document, SHPO and the Lennar will work together to find an appropriate replacement repository. The document shall be available at another location besides the SHPO and Lennar.

IV. Public Outreach.

- a. Commemorative Signage. Within one year of execution of the MOA, Lennar will create and install an interpretative and photographic display that describes the history of the JLCMSRC. The display will be located on-site in a publicly accessible area. Information gathered during the compilation of the Oregon State Level Documentation could be used for this interpretive display. The design and content of the interpretive display will be reviewed and meet the approval of USACE and SHPO prior to being installed and the stipulation accepted as fulfilled. The display will include:
- (1) At a minimum a presentation of JLCMSRC's history and interpretation of the JLCMSRC's historic significance.
  - (2) It will consist of at least one panel that may range in size from 2' by 3' up to 4' by 6'.
  - (3) The interpretive display shall be of professional quality.
  - (4) Interpretive panel(s) should be prepared by persons that possess the skills of a qualified Historian, Architectural Historian, Cultural Resource Specialist, Exhibit Specialist/ Graphic Artist; or by an organization that has the ability to create and design professional quality interpretive panels.
  - (5) Consulting Parties will be provided a reasonable opportunity to comment on the draft panel materials, placement, design, layout and text.
  - (6) Lennar shall specify in its HOA documents that long-term maintenance and care is the responsibility of the Homeowners' Association ("HOA").
  - (7) Subject to Clackamas County's approval, Lennar shall place a traffic-type historical marker sign on SE River Road to provide notice of the commemorative sign installed under this Stipulation.
  - (8) It is anticipated this display will cost no more than \$15,000. Lennar will transfer any leftover funds to the JLCMSRC Education and Preservation Fund in Stipulation VI. within 30 days of installation of the display.
- b. Within 60 days of execution of the MOA, Lennar will offer to donate physical archival material (e.g., maps, drawings, photographs, etc.) related to the JLCMSRC currently in Lennar's possession to the Clackamas County Public Library at Oak Lodge. If the library does not accept the material within 60 days of the offer, Lennar will offer the

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

material to the Consulting Parties. If no Consulting Party or other party approved by the Consulting Parties requests ownership of the materials after 60 days, Lennar has no further obligation to donate the material.

- c. In its development of the JLCMSRC, Lennar will be removing three groves of existing Douglas-fir trees and other existing trees. After completion of its infrastructure improvements including installation of agency-required street trees, Lennar shall install an additional two hundred twenty-nine trees. The tree varieties, sizes and placement shall be appropriate for Lennar's intended purpose, at its sole discretion and consistent with plans approved by Clackamas County. Notwithstanding and in recognition of the removal of the existing Douglas-fir trees, Lennar will make reasonable efforts where appropriate to incorporate Douglas-fir trees in its tree planting selections.
  - d. In its Covenants, Conditions, and Restrictions (CCRs) for the Jennings Lodge Estates subdivision, Lennar shall provide a 1-2 paragraph narrative summarizing the history of the JLCMSRC with regard to the people, improvements, and cultural uses of the site. This narrative shall be shared with the SHPO to ensure that it adequately summarizes the historic property. Consulting Parties will be provided 30 days to comment on the draft text.
  - e. Lennar shall, in its naming of the subdivision, retain "Jennings Lodge" in the name.
  - f. In commemoration of the loss of three groves of existing Douglas-fir trees, as well as a historic Bing Cherry tree and Big Leaf Maple tree, and other trees associated with the JLCMSRC, within one year of execution of the MOA Lennar will plant commemorative tree or trees (as space permits) near the signage under Stipulation IV.a.; specifically, Lennar will plant a commemorative Bing Cherry tree, a commemorative Big Leaf Maple tree, and at least one commemorative Douglas Fir tree within the development. Lennar will identify the trees as commemorative either in the signage under Stipulation IV.a., or through installation of a small plaque by each commemorative tree identifying the tree(s) as commemorative of the JLCMSRC. Long-term maintenance, care, and, if necessary, replanting will be the responsibility of the Homeowners' Association ("HOA") and Lennar shall specify the same in its HOA documents.
  - g. Lennar shall use reasonable efforts to use street names associated with the history of the Jennings Lodge area. Lennar has reserved with Clackamas County the names of Faith, Morse, Berryman, and Hodgkin to accomplish the same. Notwithstanding the foregoing, the parties acknowledge and agree that Clackamas County has sole discretion and control as to the naming of streets at the time of final platting.
- V. Relocation of the Friesen Chapel (Chapel). Lennar has offered to assist in relocation of the Chapel as follows:
- a. Lennar will provide the title to the Chapel and \$185,000 to offset relocation and rehabilitation costs to the administrator if the Chapel remains within Jennings Lodge or surrounding area (i.e., Jennings Lodge, Oak Grove, and Oatfield), but only \$50,000

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

would be offered if the Chapel is moved outside of Jennings Lodge or the surrounding area. Lennar will not provide any property (on or off-site) for relocation; the structure must be moved off-site, and the funds will help offset moving costs.

- b. Lennar will market the Chapel for relocation and rehabilitation/restoration according to accepted historic preservation standards as approved by the SHPO. The advertisement shall provide information on National Register eligibility and the application process for a qualified recipient. Attachment B contains the advertisement.
  - c. Lennar shall offer the chapel for relocation and rehabilitation/restoration to a local non-profit organization, a local government, or to other private citizens and organizations, in that order of priority. Preference will be given to participants willing to install in the Jennings Lodge community. With the assistance of interested Consulting Parties, Lennar shall screen the applicants and select a recipient to relocate and rehabilitate the Chapel. The USACE will sign off on the final decision. Lennar will notify Consulting Parties by email if a party has been selected within 30 days of making the selection. If the building is scheduled to be moved, Lennar will email the Consulting Parties of the proposed move date.
  - d. The recipient of the Chapel must agree to install a minimum of four historic photographs printed no smaller than 2' by 3' and displayed within the Chapel. These photographs must depict the old Chapel prior to the relocation, whether it is identifiably in the background or the focus of the picture, and must label the pictures as originally from the 1945 Friesen Chapel at the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon, and provide attribution. Lennar will supply the recipient electronic copies of photographs, and the SHPO will approve the photographs Lennar provides within 30 days of receipt. Lennar is encouraged to consider photographs from various sources (the community, Consulting Parties, historic records, etc.).
  - e. If Lennar fails to identify a qualified recipient to relocate and rehabilitate/restore the Chapel by September 1, 2018, or if the Chapel is not removed from the Project site by July 1, 2019, Lennar will so notify the Consulting Parties and may demolish the Chapel. Prior to demolition Lennar shall use all reasonable and practicable efforts to salvage and offer character defining architectural and structural elements of the Chapel to the ReBuilding Center, a non-profit organization, to be repurposed at its discretion. Any funds remaining from Stipulation V.a. will be transferred prior to demolition of the Chapel to the funds in Stipulation VI., and shall be in addition to any funds specified in Stipulation VI. This stipulation will be complete after the USACE receives confirmation from the fund administrator in Stipulation VI. that they have received the funds. USACE shall inform the consulting parties that the stipulation is complete.
- VI. Within the earlier of 30 days from the selection of a qualified recipient or the failure to identify a qualified recipient for the relocation of the Chapel (per Stipulation V.), Lennar will establish a JLCMSRC Education and Preservation Fund (the Fund) as partial mitigation for the adverse effects to the JLCMSRC as provided herein.

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

- a. If the Chapel is moved outside of Jennings Lodge or surrounding area per Stipulation V.a., Lennar will provide \$135,000, plus any funding remaining from Stipulation IV.a. and Stipulation V.a., to mitigate adverse impacts to the JLCMSRC. The Fund may be used for the following activities, but is not be limited to them: documentation, development of narrative materials, construction interpretative signage, development of websites, public outreach, preservation of similar NRHP-eligible camp sites in Oregon, restoration of NRHP-eligible churches in Oregon, or other similar tasks to educate and foster understanding of this historic site and its role in Jennings Lodge history. If the Chapel is relocated in Jennings Lodge or the surrounding area, Lennar shall not be required to provide any funding contemplated in this Stipulation VI., except for remaining funds, if any, from Stipulations IV.a. and V.a.
- b. Clackamas County and Restore Oregon are willing to administer the Fund. If either party is unable or unwilling to fulfill fund management duties, an alternative entity will be identified and selected by the USACE and SHPO, with input from the Consulting Parties. The USACE and SHPO will select the Fund Manager. The Fund Manager will receive and administer the mitigation funds. The Fund Manager will keep track of all costs associated with the mitigation funding account, including associated overhead/administrative costs. Mitigation funds shall be transferred from Lennar to the Fund Manager within seven days of agreement authorizing the transfer of funds is approved by the Fund Manager and Lennar. Administrative costs shall not exceed 10%, unless the increased costs are approved by the USACE and SHPO.
- c. If at least \$50,000 is available for the Fund, the Fund Manager will prepare or have prepared a Management Plan to guide use of the mitigation funds before they are expended. Projects in Clackamas County have higher priority. Consulting Parties will be provided 30 days to comment on the draft Management Plan. The content of the Management Plan will be reviewed and meet the approval of USACE and SHPO prior to acceptance.
- d. The Fund Manager will implement the Management Plan and contract out projects based on plan priorities. The Fund Manager will not be responsible for project management following the award of funds. The Fund Manager will review completed projects for compliance with the Management Plan in order to facilitate reimbursement, but will not be responsible for providing hands-on project management throughout the course of the project.
- e. As part of accepting the Fund administration responsibilities, the Fund Manager will agree to email Consulting Parties an annual summary of use of the funds for a period of three years from acceptance of the Management Plan, or until the funds are expended, whichever comes first. After three years, any remaining funds will automatically be made available for other local historic preservation efforts at the discretion of the Fund Manager and approved by SHPO.
- f. Mitigation funds shall be transferred from Lennar to the fund manager within seven days after an agreement authorizing the transfer of funds is approved by the Fund Manager

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

and Lennar. Lennar's responsibility under this Stipulation will be completed once the funding has been transferred to the Fund Manager, and the USACE receives confirmation from the Fund Manager.

## VII. Administration Stipulations.

- a. **DURATION.** If the terms of this agreement have not been implemented within five years of execution of the MOA, this agreement will expire, unless prior to expiration, the signatories agree in writing to amend the agreement to allow for an extension in accordance with Stipulation VII.d below. If the agreement expires before the undertaking or mitigation measures have been completed, and prior to work continuing on the undertaking, USACE shall so notify the signatories to this agreement and consult to develop a new MOA or request the comments of the ACHP in accordance with the terms of this MOA.
- b. **MONITORING AND REPORTING.** At least once a year, from the date of MOA execution, Lennar will email a yearly status update to the Consulting Parties detailing the current status of Stipulations under its responsibility, which will include any scheduling changes proposed, any problems encountered, and any disputes and objections. Upon completion of the five-year duration of this MOA, or following the completion of the mitigation measures described herein, Lennar, shall provide all Consulting Parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes, any problems encountered, and any disputes and objections received in the efforts of USACE and Lennar, to carry out the terms of this MOA.
- c. **DISPUTE RESOLUTION.** Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:
  - (1) Forward all documentation relevant to the dispute, including USACE's proposed resolution, to the ACHP. The ACHP shall provide USACE with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response within 30 days of receiving a response from the ACHP. USACE will then proceed according to its final decision.
  - (2) If the ACHP does not provide its advice regarding the dispute within the 30 day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response within 30 days that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response.

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)

(3) USACE and Lennar will assume responsibility for carrying out all other actions subject to the terms of this MOA that are not the subject of the dispute and remain unchanged.

- d. AMENDMENTS. Any signatory may request that this MOA be amended by submitting such a request to the other signatories and consulting parties in writing. The USACE shall consult with the signatories and consulting parties for up to sixty days, or another time period agreed to by all signatories, concerning the necessity and appropriateness of the proposed amendment. At the end of the consultation period the USACE shall provide an amended MOA for signature by the signatories and consulting parties or a written statement describing why the USACE chose not to pursue an amendment to this MOA. Amendments shall be effective on the date a copy of the MOA signed by all of the signatories is filed with the ACHP.
- e. TERMINATION. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VII.d., above. If within 30 days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the Consulting Parties. Should this agreement be terminated, and prior to work continuing on the undertaking, the USACE shall either consult to develop a new MOA or request the comments of the ACHP.
- f. EXECUTION. Execution of this MOA by USACE, ACHP, and SHPO and implementation of its terms are evidence that USACE has taken into account the effects of this undertaking on historic properties, afforded the ACHP and all concerned parties an opportunity to comment, and satisfied the requirements of Section 106 of the NHPA (54 U.S.C. § 306108) and applicable implementing regulations.


SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Signatory



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Aaron L. Dorf  
Colonel, U.S. Army Corps of Engineers  
District Commander



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Date


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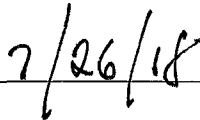
SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Note: By signing this document, you agree to all the terms and conditions outlined in the subject  
Memorandum of Agreement.

Signatory



\_\_\_\_\_  
John M. Fowler  
Executive Director  
Advisory Council on Historic Preservation



\_\_\_\_\_  
Date

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SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Note: By signing this document, you agree to all the terms and conditions outlined in the subject  
Memorandum of Agreement.

Signatory

  
Christine Curran  
Deputy State Historic Preservation Officer  
Oregon State Historic Preservation Office  
*Ian P. Johnson*  
*Assoc Deputy SHPO*


7/12/2018  
Date

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SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Note: By signing this document, you agree to all the terms and conditions outlined in the subject  
Memorandum of Agreement.

Invited Signatory

  
\_\_\_\_\_  
Lennar Northwest, Inc.

7-12-18  
\_\_\_\_\_  
Date

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SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Concurring Party

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Restore Oregon

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Date

Note: Signatures continued on next page.

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Concurring Party

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Jennings Lodge Community Planning Organization

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Date

Note: Signatures continued on next page.

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Concurring Party

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Oak Lodge History Detectives

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Date

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SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Concurring Party

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National Trust for Historic Preservation

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Date

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SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Concurring Party:  
CLACKAMAS COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

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SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Concurring Party

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Restore Oregon

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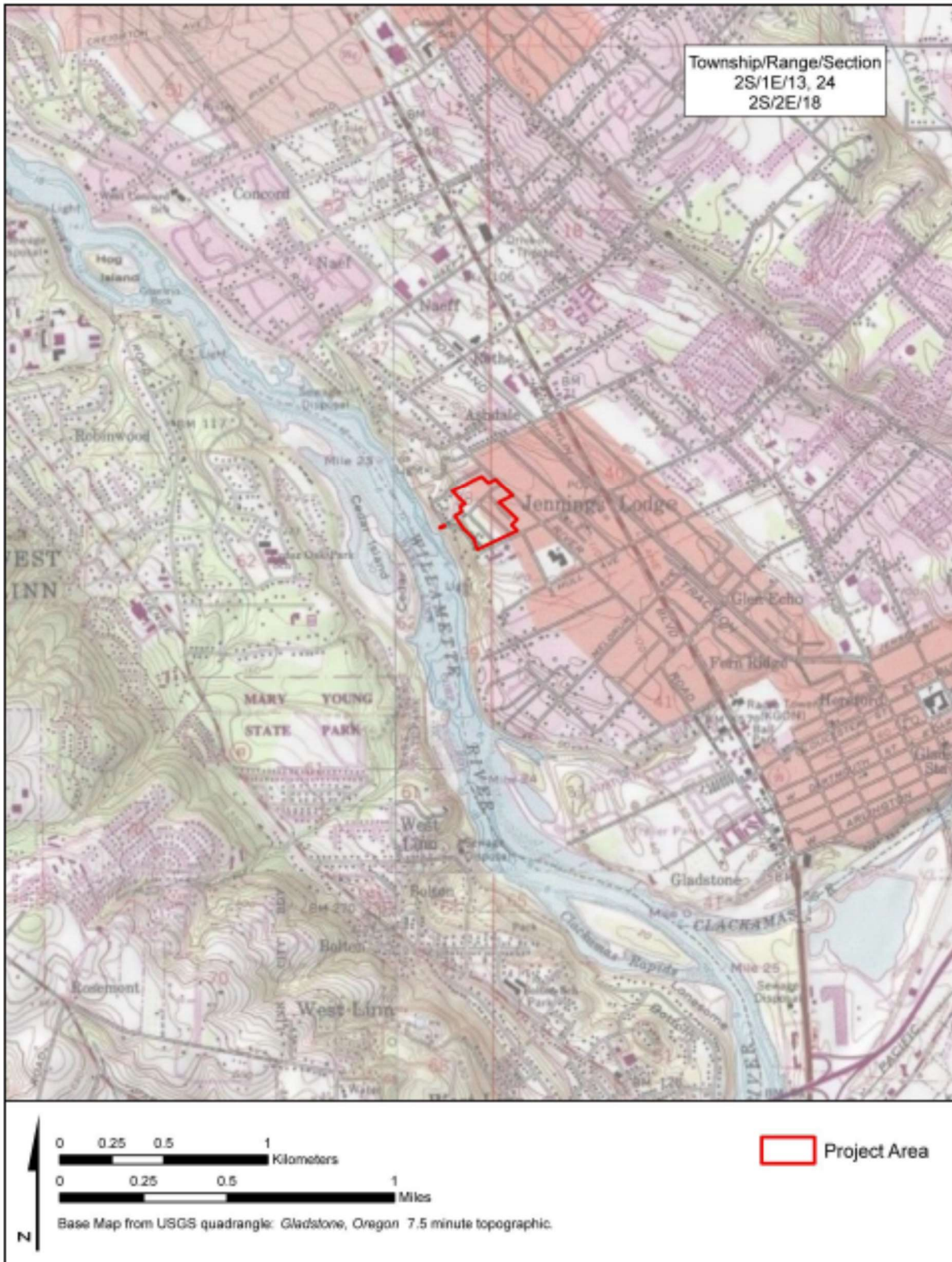
Date

Note: End of signatures.

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

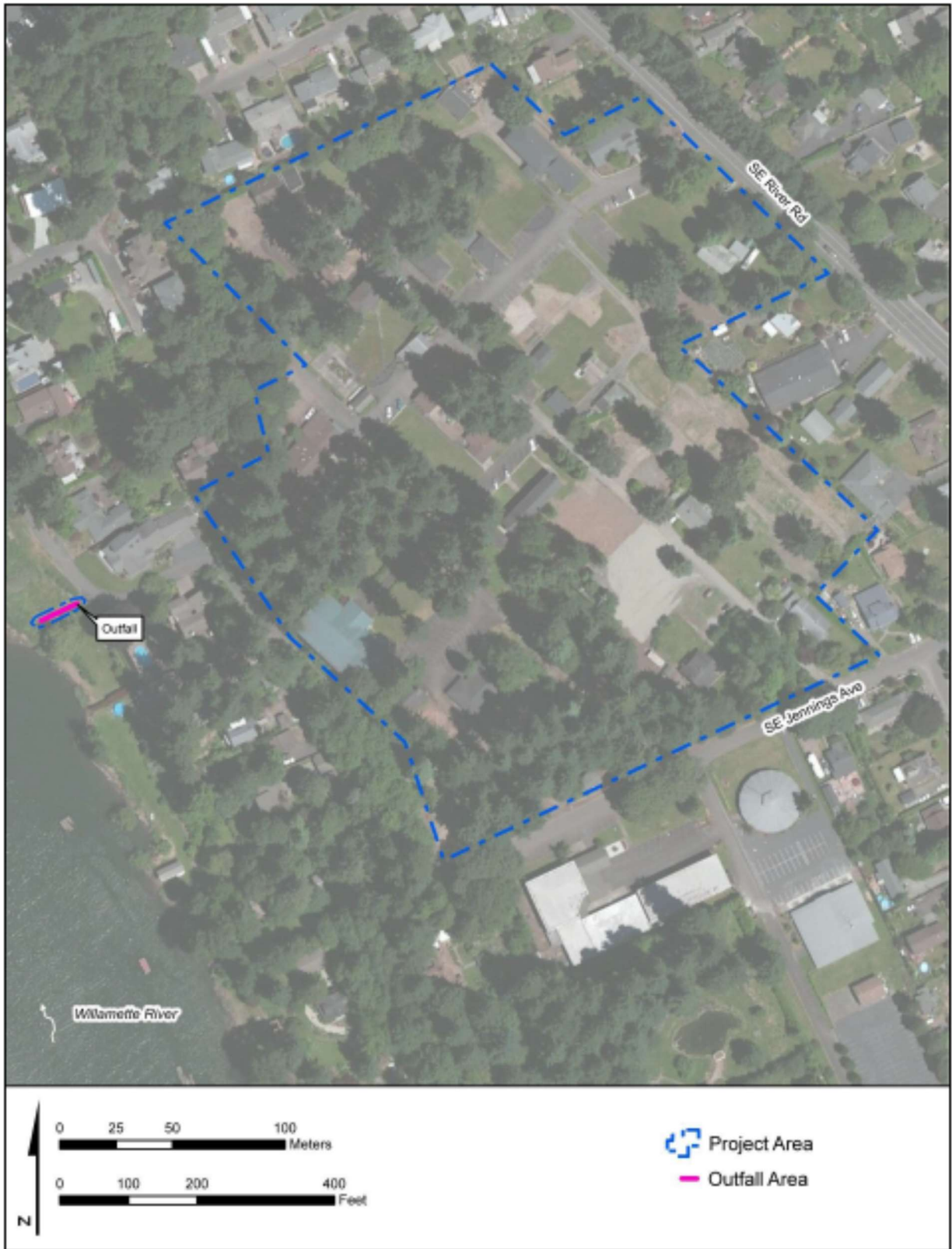
Attachment A – Area of Potential Effect

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)



Attachment A – Area of Potential Effect

SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center, Clackamas County, Oregon (USACE Reference NWP-2016-495)



SUBJECT: Adverse Effects to the Jennings Lodge Camp Meeting Site and Retreat Center,  
Clackamas County, Oregon (USACE Reference NWP-2016-495)

Attachment B –Advertisement



**FOR IMMEDIATE RELEASE**

**CONTACT:** LENNAR NORTHWEST, INC.  
Teresa Felton  
Phone – 360-258-7885  
Email – Teresa.Felton@Lennar.com

**Request for Proposals Issued for Relocation  
of Jennings Lodge Evangelical Center’s  
Friesen Chapel**

Milwaukie, Oregon: Lennar Northwest, Inc. (“Lennar”), the property owner, has issued this Request For Proposal (RFP) seeking organizations or individuals interested in relocating the Friesen Chapel from its present location on the former Jennings Lodge Evangelical Center property in Milwaukie, Oregon. Additional RFP information may be obtained by visiting the following website: <https://lennar.box.com/s/tpcyy8xnktye32gnh8zoo37c0lywc2ge>.

Lennar is undertaking the development of the property for a residential neighborhood. To accommodate this project, Lennar is issuing this RFP to relocate the Friesen Chapel – constructed in 1945 and determined to be a contributing element to the National Register of Historic Places of the Jennings Lodge Camp Meeting Site and Retreat Center historic district – on behalf of Lennar and in coordination with the State Historic Preservation Office (“SHPO”), Advisory Council on Historic Preservation (“ACHP”) and United States Army Corps of Engineers (“USACE”). **Proposals must be received by 5:00 p.m. by August 24, 2018.** No proposals received after the deadline will be considered.

**PLEASE NOTE:** This offering and below-noted offsetting funding is contingent upon the execution of the applicable Section 106 of the National Historic Preservation Act Memorandum of Agreement (“MOA”).

The following stipulations apply:

- The Friesen Chapel shall be completely removed from the Lennar property. The selected organization or individual shall be solely responsible for providing its own property for the relocation.
- Lennar, in coordination with USACE, will make the final determination of approving the organization or individual selected (the “Selected Party”) for the relocation and its corresponding work plan, based on accepted historic preservation standards as approved by OR SHPO.
- The Chapel shall be offered for relocation and rehabilitation to a non-profit organization or to other private citizens and organizations in that order of priority.

11807 NE 99<sup>th</sup> Street, Suite 1170 Vancouver, WA 98686 Office 360 258-7900 Fax 360 258-7901

**LENNAR.COM**

# LENNAR®

- Lennar has made funding available to the Selected Party to offset relocation and rehabilitation costs. If the Chapel is relocated to remain in a location within the Jennings Lodge or surrounding area (i.e., Jennings Lodge, Oak Grove, and Oatfield), Lennar will provide \$185,000 for offsetting funding. If the Chapel is relocated to remain in a location outside the Jennings Lodge or surrounding area, Lennar will provide \$50,000 for offsetting funding. Excepting the above-noted offsetting funding, which shall be provided to the Selected Party, any and all costs associated with the feasibility analysis, relocation and rehabilitation of the Chapel shall be borne by the Selected Party.
- Interested parties are made aware that Lennar's property will be partially or fully improved with construction underway at the time of Chapel relocation. The Selected Party acknowledges the property is an active construction site, shall exercise best practices related to safety and environmental protection measures, shall be fully insured as required by Lennar, and be solely responsible for the protection, repair or replacement of any improvements or property that may be affected as a result of its Chapel relocation efforts. The above-noted offsetting funding will be first-applied to costs for such protection, repair or replacement, if any.
- The Chapel has an approximate overall footprint of 43' W x 57' L, and central structure height of 25', plus the steeple projecting an additional 20' over the structure.
- The deadline to select the organization or individual committed to relocating and rehabilitating the Friesen Chapel is September 4, 2018. The Chapel must be completely removed from Lennar's property by July 1, 2019. No extensions will be granted.
- Except for arrangements made with and under personal escort by Lennar, the property is not available for access or inspection.
- Interested parties seeking additional information should contact Teresa Felton of Lennar at 360-258-7885 or via email at [Teresa.Felton@Lennar.com](mailto:Teresa.Felton@Lennar.com).

# Jennings Lodge Camp Meeting Site and Retreat Center Education and Preservation Fund – Management Plan

## OVERVIEW

In 2018, Lennar Northwest applied for a permit to redevelop the Jennings Lodge Camp Meeting Site and Retreat Center (JLCMSRC) property. During the permit review process, the United States Army Corps of Engineers (USACE) determined that the JLCMSRC, an historic district with 17 contributing structures and three groves of trees, was eligible for listing in the National Register of Historic Places (NHRP), and that removal of the structures and trees would result in an adverse effect to the historic district.

After consultation with numerous stakeholders (including the Oregon State Historic Preservation Office (SHPO), Oak Lodge History Detectives, Restore Oregon, the National Trust for Historic Preservation, the Jennings Lodge Community Planning Organization, the Advisory Council on Historic Preservation), a Memorandum of Agreement (MOA) pursuant to Section 106 of the National Historic Preservation Act was signed by Lennar Northwest, USACE, SHPO, and ACHP to take into account and mitigate the adverse effects of Lennar Northwest's redevelopment of the JLCMSRC site. (See Appendix E for the full MOA)

As part of the MOA, Lennar Northwest agreed to establish a JLCMSRC Education and Preservation Fund (EPF), to be administered by Clackamas County. This Management Plan outlines:

- 1) Role and responsibilities of Clackamas County in managing the EPF
- 2) EPF permissible uses and funding priorities
- 3) EPF funding request evaluation and disbursement procedures
- 4) Responsibilities of recipients of EPF awards

## MANAGEMENT OF EPF FUND BY CLACKAMAS COUNTY

Lennar has funded the EPF contemplated in sections V.a. and VI. of the MOA via a transfer of \$185,000 to an escrow account. Per section IV.a.(8), Lennar is also obligated to transfer the remainder, if any, of the \$15,000 allowance for the installation of the commemorative signage contemplated in section IV.a. of the MOA. No other contributions are expected to be made to the EPF.

Clackamas County Business and Community Services (BCS) has agreed to act as Fund Manager for the EPF. Clackamas County's responsibilities will include:

- Receiving the funds transferred into escrow by Lennar noted above.
- Keeping track of all revenues, expenditures, and other EPF activities, in accordance with applicable Clackamas County financial management policies and/or best practices.
- Evaluating funding requests, making awards, and disbursing EPF funds based on the procedures adopted by Clackamas County and the priorities/criteria outlined in the MOA and this Management Plan.



- Reviewing completed projects for compliance with this Management Plan following the award of funds (see MOA Stipulation VI.d).
  - Clackamas County will not be responsible for providing project management support to any award recipient.
- Providing an annual email summary of project awards and EPF usage to the Consulting Parties (USACE, SHPO, ACHP, Lennar, Oak Lodge History Detectives, Restore Oregon, and NTHP). (see MOA Stipulation VI.e).
  - Such summaries shall be provided for a period of three years from the acceptance of this Management Plan, or until all funds have been expended (whichever comes first).

Clackamas County may recoup overhead costs associated with EPF administration. Such costs shall not exceed \$18,500 (10%), unless approved in advance by USACE and SHPO (See MOA Stipulation VI.b).

## PERMISSIBLE USES AND FUNDING PRIORITIES

EPF funds will be used to support projects and activities which foster an understanding of the JLCSMRC historic site and its role in the history of the Jennings lodge area, or preservation/restoration of other NHRP-eligible churches/campsites in Oregon. Projects and activities may include (but not be limited to):

- Documentation
- Development of narrative materials
- Construction interpretive signage
- Development of websites
- Public outreach
- Preservation of similar NHRP-eligible campsites in Oregon
- Restoration of NHRP-eligible churches in Oregon
- Other similar tasks to educate and foster understanding of the historic site and its role in Jennings Lodge history

Projects within or focusing on Clackamas County will be prioritized over projects occurring in or focusing on areas outside of Clackamas County (see MOA Stipulation VI.c).

## FUNDING REQUEST EVALUATION AND REIMBURSEMENT PROCEDURES

It is Clackamas County policy to issue grants to outside entities using an open and competitive process. The County has identified Notice of Funding Opportunities (NOFOs) as the primary competitive process for the issuance of grants (please see Appendix D for Clackamas County's NOFO policy).

Once EPF funds have been received, the Fund Manager will follow Clackamas County's NOFO process to announce and solicit applications for funds, including:

- Announcement: The Fund Manager will create an announcement for publication on the County's central website for Notice of Funding Opportunities: [www.clackamas.us/grants](http://www.clackamas.us/grants). Announcements will contain sections on program description, award information, eligibility, application process, application evaluation, and non-discrimination information. Consulting Parties to the MOA will be notified via email when announcements are posted.

- Funding Request: A standardized funding request form will be developed and used. The standardized form will include the following elements:
  - Applicant information
  - Project description, outputs/outcomes, and success measurement criteria
  - Major project activities and timeline
  - Anticipated project budget

Please see Appendix B, “EPF GRANT PROCESS”, for further information on funding requests.

- Evaluation: Clackamas County will develop written criteria for evaluating funding requests consistent with this plan’s “PERMISSIBLE USES AND FUNDING PRIORITIES” section. The process of evaluation and/or scoring will be fully documented. The Fund Manager may choose scoring measures, narrative methods, or any other method appropriate to the award when developing evaluation criteria.

Please see Appendix B, “EPF GRANT PROCESS”, for further information on evaluation procedures and criteria.

- Notification: Award notifications will be made publicly available, as well as provided to all applicants in writing. Notifications will include when it is anticipated an official agreement will be issued, when costs related to the project may be incurred, and any other information the applicant should be made aware of prior to the commencement of the program.

Awards will be made upon selection of grant recipient.

## RECIPIENT RESPONSIBILITIES

In order to facilitate the Fund Manager’s responsibilities for reviewing completed projects for compliance with this Management Plan, and for facilitating required annual summaries of use of funds, recipients of EPF awards will be required to complete brief quarterly reports describing project activities, documenting project outputs/outcomes, and comparing project progress with previously-identified success measurement criteria. A sample quarterly progress report has been included in Appendix C.

## APPENDIX A: CURRENT CONTACTS FOR CONSULTING PARTIES

### United States Army Corps of Engineers (USACE)

Winston Zack

[Winston.S.Zack@usace.army.mil](mailto:Winston.S.Zack@usace.army.mil)

### Oregon State Historic Preservation Office (SHPO)

Tracy Schwartz

[Tracy.Schwartz@oregon.gov](mailto:Tracy.Schwartz@oregon.gov)

Ian P. Johnson

[ian.johnson@oregon.gov](mailto:ian.johnson@oregon.gov)

### Oak Lodge History Detectives

[info@oaklodgehistory.org](mailto:info@oaklodgehistory.org)

### Lennar

Michael Loomis

[mike.loomis@lennar.com](mailto:mike.loomis@lennar.com)

### Restore Oregon

Peggy Moretti

[peggym@restoreoregon.org](mailto:peggym@restoreoregon.org)

[info@restoreoregon.org](mailto:info@restoreoregon.org)

### National Trust for Historic Preservation

Elizabeth 'Betsy' S. Merritt

[emerritt@savingplaces.org](mailto:emerritt@savingplaces.org)

### Jennings Lodge Community Planning Organization

Jane Morrison

[jenningslodgpecpo@gmail.com](mailto:jenningslodgpecpo@gmail.com)

### Advisory Council on Historic Preservation

John M. Fowler

[jfowler@achp.gov](mailto:jfowler@achp.gov)

## APPENDIX B: EPF GRANT PROCESS

The Jennings Lodge Camp Meeting Site and Retreat Center Education and Preservation Fund (EPF) funds will be used to support projects and activities which foster an understanding of the JLCMSRC historic site and its role in the history of the Jennings lodge area, or preservation/restoration of other NHRP-eligible churches/campsites in Oregon.

Eligible projects and activities may include (but not be limited to):

- Documentation
- Development of narrative materials
- Construction interpretive signage
- Development of websites
- Public outreach
- Preservation of similar NHRP-eligible campsites in Oregon
- Restoration of NHRP-eligible churches in Oregon
- Other similar tasks to educate and foster understanding of the historic site and its role in Jennings Lodge history

### Financial Information

Lennar has funded the EPF contemplated in sections V.a. and VI. of the MOA via a transfer of \$185,000 to an escrow account. Per section IV.a.(8), Lennar is also obligated to transfer the remainder, if any, of the \$15,000 allowance for the installation of the commemorative signage contemplated in section IV.a. of the MOA.

No other contributions are expected to be made to the EPF, and the EPF will be terminated once the existing funds are depleted.

Minimum grant award = \$500

Maximum grant award = \$185,000 + the remainder (if any) of the \$15,000 allowance noted above.

### Matching Funds

A dollar match for funds requested is not required.

### Eligible Applicants

Organizations seeking EPF grant funding must meet the following requirements:

- Operate within the State of Oregon as a public or private nonprofit.

- Preference may be given to community-based or community-focused organizations actively engaged with the Jennings Lodge community.
- Be experienced or primarily involved in:
  - The creation and administration of educational materials and programs related to local history, or
  - The preservation and/or interpretation of buildings, artifacts, documents, and other items that relate to history.
- Be experienced with successfully administering history-related educational programming and activities.

## Application Requirements

An application form will be developed which will ask applicants to provide the following information:

- Contact information for applicant including project manager's email address and phone number.
- Description of proposed project(s).
  - One of the projects or project components must include a webpage (which may be linked via QR code or URL from the JLCMSRC's interpretive sign) containing supplemental historical JLCMSRC information.
- Timeline of major project activities and expected completion date(s).
- Anticipated project budget.
- Discussion of how the described project(s) will provide long-term educational benefit to the Jennings Lodge community.
  - For elements of the proposed project related to education, the application should convey how the principles of pedagogy and andragogy will be applied to address child and adult learning.
- Description of how the applicant will engage the Jennings Lodge community and provide the community with periodic updates of project activities/progress.
- A sample list of the applicant's completed history-related educational programming and activities.
- For elements of the project related to conservation, development or interpretation of cultural heritage, the application must convey how such work will be completed using appropriate museum, archival, preservation, research or library practices, including specification of which standards will be followed for those aspects of the project.
  - For digitization projects, recommended minimum standards are those promoted by the Association for Library Collections & Technical Services (<http://www.ala.org/alcts/resources/preserv/minimum-digitization-capture-recommendations>)
- For elements of a project related to the preservation/restoration of similar churches or campsites, the application must convey how such work will meet the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (<https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>).

## Application Submission

Opportunities will be advertised and applications solicited in accordance with Clackamas County Notice of Funding Opportunity (NOFO) Policy (see Appendix E).

## Evaluation Committee

Grant recipients will be selected by an evaluation committee comprised of the Director and Deputy Director of Business and Community Services and one Jennings Lodge community member. The anticipated composition of the evaluation committee is:

- Laura Zentner, Director, Clackamas County Business and Community Services
- Greg Williams, Deputy Director, Clackamas County Business and Community Services
- Karen Bjorklund, Community Member, Jennings Lodge

## Evaluation Criteria

Applications will be evaluated based on:

- How well the proposed project(s) foster an understanding of the JLCSMRC historic site and its role in the history of the Jennings lodge area.
- Whether project(s) will assist with preservation/restoration of other NHRP-eligible churches/campsites in Oregon.
- Public outreach components, particularly those within the Jennings Lodge community.
- Long-term education benefit to the Jennings Lodge community.
- Connection to the preservation and interpretation of Clackamas County's history. Projects within or focusing on Clackamas County will be prioritized over projects occurring in or focusing on areas outside of Clackamas County (see MOA Stipulation VI.c).

## Grant Reporting and Payment

Awarded projects will be the subjects of binding agreements between Clackamas County and the applicants. Grant funds will be disbursed upon selection of grant recipient.

Recipients will be required to submit quarterly progress reports to Clackamas County. The progress reports shall include:

- A description of specific project activities undertaken, and/or of progress made on activities already in progress.
- A description of how the activities undertaken/progress made support the goals of the EPF.
- A description of the community outreach/engagement activities undertaken.
- Results of any activities to evaluate project/activity results (including gathering baseline statistics, developing/conducting surveys, conducting interviews, recording anecdotes, or collecting usage data).
- A description of any particular successes/challenges encountered.
- An accounting of EPF fund expenditures.

A sample reporting template has been included in Appendix D. Recipients may elect to submit reports in an alternate format.

## APPENDIX C: SAMPLE QUARTERLY PROGRESS REPORT

### Jennings Lodge Camp Meeting Site and Retreat Center Education and Preservation Fund

### Progress Report – FY 20xx

This reporting form is designed to allow award recipients to provide a summary of their activities and results to date.

Please complete and submit reports by email to [xxxxxx@clackamas.us](mailto:xxxxxx@clackamas.us).

#### GENERAL INFORMATION

<b>Reporting Period</b>	<input type="checkbox"/> First quarter <input type="checkbox"/> Second quarter <input type="checkbox"/> Third quarter <input type="checkbox"/> Fourth quarter
<b>Project Title</b>	
<b>Project Coordinator</b>	

## ACTIVITIES

*Describe your project activities this period and your progress toward project goals. Include discussion of community engagement/outreach activities.*

## EVALUATION

*Describe evaluation activities begun or completed this period. Examples include gathering baseline statistics, developing a survey, conducting interviews, recording anecdotes, or collecting usage data.*

## SUCSESSES

*Describe any project-related successes you have experienced this period.*



**CONCERNS**

*Describe any difficulties or issues you are currently experiencing with the project.*

**FINANCIAL PROGRESS**

**Award Funds**

<b>Budget Category</b>	<b>Approved Project Budget</b>	<b>Funds spent this period</b>	<b>Funds spent to date</b>	<b>Remaining Funds</b>
Supplies	\$	\$	\$	\$
Professional Services and Consultant Fees	\$	\$	\$	\$
Equipment	\$	\$	\$	\$
Other (explain in 'Additional Comments' below)	\$	\$	\$	\$
<b>Total (sum of all categories)</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>

**ADDITIONAL COMMENTS**

--

**REPORT PREPARED BY**

<b>Name</b>		<b>Phone</b>	
<b>Email</b>		<b>Date</b>	

<b>Name</b>		<b>Phone</b>	
<b>Email</b>		<b>Date</b>	

## APPENDIX D: CLACKAMAS COUNTY NOTICE OF FUNDING OPPORTUNITY (NOFO) POLICY

To properly steward public funds and to avoid potential conflicts of interests (see *Conflict of Interest Policy*), it is County policy to issue grants to outside entities using an open and competitive process. A competitive process helps to reduce the chances of collusion and minimizes political pressures. It also offers a better opportunity for getting the greatest public benefit for the greatest value. To this end, this section provides a basic structure to be followed by County Departments when issuing grant awards. The County has identified Notice of Funding Opportunities (NOFO's) as the primary competitive process for the issuance of grants. It remains the responsibility of County Departments to follow the requirements of their funding agency, if any, for the competitive awarding of recipient and subrecipient agreements. The integrity of the NOFO process outlined in this section requires planning and foresight. Departments are encouraged to plan ahead.

This section establishes guidelines for the competitive issuance of County grant awards. Departments are responsible for policy implementation and adherence.

The NOFO process must be used for all grant awards issued by County departments and agencies to outside entities, with the following exceptions:

- Subrecipients specifically named either in the County grant application or County award document;
- Where the Board of County Commissioners specifically appropriates funds to a recipient;
- Subrecipients chosen by external committees or regional organizations with authority to authorize funding by the granting agency;
- Any other special circumstance approved by Finance.

There are five required NOFO elements: advertisement or announcement, application, evaluation, notification, and appeal.

### NOFO Announcements

Announcements should include any links to application or additional materials (such as those which may be required by your funding agency, e.g. a grant manual from HUD), but not the materials themselves. Departments are responsible for creating, at their discretion, a public presence for application or supplementary materials, as well as maintaining the process for receiving completed applications. The announcements will be submitted to Finance for review ([FinanceGrants@clackamas.us](mailto:FinanceGrants@clackamas.us)). Finance will forward the material to PGA for publication on the County's central website for Notice of Funding Opportunities: [www.clackamas.us/grants](http://www.clackamas.us/grants). PGA will maintain the website. In addition, departments are responsible for providing notice of the announcement in appropriately targeted media. Statements in each of the five languages identified in Appendix III of the [County's Title VI policy](#), tailored to the NOFO, should be listed on the first page of the NOFO and in the targeted media, which will provide opportunities for applicants to request translation of the NOFO (paid by the department funding the agreement) and contact information to make such a request. Opportunities will be segregated within the website by grant and/or program type. The website will also contain a record of recently awarded grants. Announcements shall contain the following, standardized sections:

- Program Description. Include a full program description of the opportunity describing, at minimum, the technical requirements, required program components, and indicators of successful programs. Any other information deemed important by the department may be included.
- Award Information.
  - Include the funding source(s) for the program, indicating clearly whether and which federal sources (if any) may be included.
  - Indicate whether multiple awards will be issued from this announcement and the term of the award (e.g. multiple years, single year, etc.)
  - The anticipated start and end dates for the period of performance.
  - Include the reporting and frequency requirements.
  - Minimum and maximum award amount, as appropriate.
- Eligibility.
  - Clearly identify eligibility requirements.
  - Include any cost sharing/matching requirements.
  - If funded by Federal funds, include a requirement that the applicant must have a DUNS number, be registered in sam.gov and not be disbarred or suspended.
- Application and Submission Information.
  - Include application deadline. It is recommended the open period for application be at least 20 business days.
  - Links to location of application forms with instructions for completion.
  - List of any supporting documents required.
    - FOR EXAMPLE: If a federally funded award: a copy of the applicant's most recent audited financials, an inquiry as to whether there are any outstanding lawsuits against the applicant (with room to provide details), and a list of federal awards (with amounts) the applicant currently manages. (These materials are necessary for the required Risk Assessment.)
  - Where & how to submit application.
  - Funding restrictions which must be addressed in the applicant's budget.
- Application Evaluation.
  - Outline of the application review process, scoring criteria and timeline.
  - For federal awards, departments are required, in conjunction with Finance, to complete a Risk Assessment on applicants and include the Risk Assessment outcome in their award determination as appropriate.
- Non-Discrimination.
  - Each announcement must contain the following language: "Per the Civil Rights Act of 1964, no person shall, on the basis of race, color, or national origin, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any County program, service or activity."

## Applications

So all applicants are provided the same information, application materials should be standardized for the purpose of any given award or set of awards. In the development of applications, funding agency considerations should be prioritized. Therefore, departments should develop applications which include all program elements, including budgets, pertinent to awards involving pass-through funds. Departments

may collect application inquiries and post them as FAQ addendums to the award announcement in the website.

## Record Retention

Awarding Departments must retain submitted applications for three years after the submission deadline, or as prescribed by your funding agency, per record retention requirements, including destruction at the end of the retention period.

## Evaluations

Evaluation processes and criteria must be predetermined, in writing, and the process of evaluation and/or scoring must be fully documented, and is subject to retention requirements. As with applications, funding agency considerations should be prioritized in the development of evaluation criteria. Departments may choose scoring measures, narrative methods, or any other criteria appropriate to the award or required by the funding agency in the development of their evaluation criteria.

## Notifications

Departments should standardize and make explicit the notification of awards to applicants. Notifications should be made publicly available through a press release, posted on the internet, as well as provided to all applicants in writing. Notifications should also include when it is anticipated an official agreement will be issued, when costs related to the project may be incurred, how pre-award costs will be handled, and any other information the applicant should be made aware of prior to commencement of the program. Recently closed NOFO's will be listed in a section of the NOFO website.

## Appeal process

Departments are encouraged to include an appeal process for applicants not awarded funds. If included, the process may be tailored to the individual NOFO, but must be in writing prior to the initiation of the funding opportunity, made explicit in the application (how the appeal will be evaluated, how the applicant will be notified of appeal review and final decision, etc.), and, if desired, constructive feedback on unsuccessful and appealed applications. Additionally, the evaluation of appeals must be documented in writing and is subject to the three-year retention policy.



**DAN JOHNSON**  
DIRECTOR

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

January 28, 2021

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Cooperative Improvement Agreement with the Oregon Department of  
Transportation for the Clackamas Regional Center Mobility Improvement Project

<b>Purpose/Outcome</b>	This agreement memorializes roles and responsibilities as agreed to by all parties related to right of way acquisition, construction and maintenance for the Clackamas Regional Center mobility improvement project.
<b>Dollar Amount and Fiscal Impact</b>	The Agency will reimburse ODOT up to \$60,000 for costs associated with inspection and right of way services
<b>Funding Source</b>	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District.
<b>Duration</b>	This Agreement will be in effect for twenty (20) years.
<b>Previous Board Action/Review</b>	The Board approved the construction contract on December 5, 2019. This matter was discussed at Issues on Jan 19, 2021.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. <i>How does this item align with your department's Strategic Business Plan goals?</i> None</li> <li>2. <i>How does this item align with the County's Performance Clackamas goals?</i> Build public trust through good government</li> </ol>
<b>Counsel Review</b>	Reviewed and Approved by County Counsel on December 15, 2020 (NB)
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. <i>Was this item process through Procurement?</i> No</li> <li>2. <i>If no, provide brief explanation:</i> Item is an IGA</li> </ol>
<b>Contact Person</b>	Dave Queener, Development Agency Program Supervisor 503-742-4322

**BACKGROUND:**

Construction is underway on the Clackamas Regional Center mobility improvement project. Some portions of the project are within ODOT right of way, which requires inspection by their personnel. In addition, portions of the acquired right of way will need to be transferred to the State following completion of the project.

This three party agreement between the County, Development Agency and ODOT memorializes the roles and responsibilities of each party as it relates to right of way acquisition, construction and maintenance.

The Agreement will remain in effect for twenty (20) years and commits the Agency to reimburse ODOT up to \$60,000 for inspection and right of way service costs.

**RECOMMENDATION:**

Staff recommends the Board approve and authorize the Chair to sign the Cooperative Improvement Agreement with Oregon Department of Transportation for the Clackamas Regional Center mobility improvement project.

Respectfully submitted,

*David Queener*

David Queener, Program Supervisor  
Development Agency

**COOPERATIVE IMPROVEMENT AGREEMENT  
Clackamas Regional Center Mobility Projects**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" Clackamas County, acting by and through its elected officials, hereinafter referred to as "County," and the Clackamas County Development Agency, the urban renewal Agency of Clackamas County, acting by and through its duly appointed board, hereinafter referred to as "Agency" all herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. I-205 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Harmony Road, Sunnyside Road, Sunnybrook Blvd., SE Stevens Road, and SE 80<sup>th</sup>, SE 93<sup>rd</sup>, and SE 97<sup>th</sup> are a part of the county road system under the jurisdiction and control of Clackamas County.
2. Agency is the County's Urban Renewal Agency and is authorized under ORS 457.035 to enter into this Agreement and to perform work on behalf of the County.
3. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), 283.110, [366.572](#) and [366.576](#), State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
4. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.
5. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for their performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
6. Agency is building a suite of projects, together known as the Clackamas Regional Center Mobility Project. It encompasses approximately 30 transportation improvements across County and State facilities paid for by County funds. This Agreement lays out reimbursement for State's activities in reviewing, permitting, and



inspecting the Project improvements that impact State facilities and outlines future maintenance responsibilities for the new improvements on State right of way.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

## **TERMS OF AGREEMENT**

1. Under such authority, the Parties agree to the Agency designing and constructing a suite of projects referred to as the Clackamas Regional Center Mobility Project, hereinafter referred to as "Project." The Project includes:

- Curbs and sidewalks along Harmony Road, Sunnyside Road, Sunnybrook Blvd., SE 84th Ave., and SE Stevens Road
- Bike lanes & Cycle tracks along SE Harmony Road and SE Sunnyside Road
- Traffic signal modifications at SE Sunnyside Road and I-205 Northbound Ramps, and SE Sunnyside Road and I-205 Southbound Ramps.
- Striping and signing
- Paving
- Street lighting
- Landscaping
- Retaining Walls
- Storm system improvements
- Stormwater quality and detention facilities
- Bridge widening at SE Sunnyside Road overpass over I-205
- Repair or replace ITS signs on the south face of the bridge overpass at SE Sunnyside Road
- Widening the off and on I-205 Northbound ramps at SE Sunnyside Road

The location of the Project is approximately as shown on the map marked Exhibit A. The Project excludes the areas shown on Exhibit A-2. Exhibits A and A-2 are attached hereto and by this reference made a part hereof.

2. The Project will be financed entirely by Agency at an estimated cost of \$23,800,000.

3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance and power responsibilities for the useful life of the facilities constructed as part of the Project. The useful life is defined as twenty (20) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

## **AGENCY AND COUNTY OBLIGATIONS**

1. Agency shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$60,000, said amount being equal to the estimated total cost for the work performed by State as further described under State Obligations. Agency agrees to make additional deposits as needed upon request from State and mutually agreed to by both State and Agency.
2. Upon completion of the Project and receipt from State of an itemized statement of the actual total cost of State's participation for the Project, Agency shall pay any amount which, when added to Agency's advance deposit, will equal 100 percent of actual total mutually agreed State costs for the Project. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to Agency. Agency shall not be liable for costs exceeding \$60,000 without first receiving from State a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval.
3. Agency or its consultant shall conduct the necessary field surveys, environmental studies, traffic investigations; arrange for relocation or reconstruction of any conflicting utility facilities; obtain all needed right of way; identify and obtain all required permits; and perform all preliminary engineering and design work required to produce plans, specifications, and cost estimates. Agency or its contractor shall construct the Project, perform all construction engineering, including all required materials testing and quality documentation, provide technical inspection, project management, and other necessary functions for contract administration for the construction contract entered into for the Project.
4. Agency shall design and construct the portions of the Project located on or along the Oregon State Highway System (state highway) in conformance with the current edition of the ODOT Highway Design Manual and the Oregon Standard Specifications for Construction Manual. Agency understands the Project shall be designed and constructed to State standards and approved by State prior to advertisement for bid, or construction of Project by Agency.
5. Agency agrees that for all projects on the Oregon State Highway System or State-owned facility, for portions of the Project located on or along the Oregon State Highway System (state highway), any design element that does not meet ODOT Highway Design Manual design standards must be justified and documented by means of a design exception. Agency further agrees that for all projects on the NHS,

regardless of funding source, any design element that does not meet AASHTO standards must be justified and documented by means of a design exception. State shall review any design exceptions on the Oregon State Highway System and retains authority for their approval.

6. Agency agrees all traffic control devices and traffic management plans shall meet the requirements of the current edition of the Manual on Uniform Traffic Control Devices and Oregon Supplement as adopted in Oregon Administrative Rule (OAR) 734-020-0005. Agency must obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic signal, or illumination to be installed on a state highway pursuant to OAR 734-020-0430.

7. Americans with Disabilities Act Compliance

a. For portions of the Project located on or along the Oregon State Highway System (state highway), when the Project scope includes work on sidewalks, curb ramps, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, Agency shall:

- i. Utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
- ii. Follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan, and current ODOT Curb Ramp Inspection form; and
- iii. At Project completion, send an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required from the Agency showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address: <https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
- iv. Promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

- v. Ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.

b. Local Roads: For portions of the Project located on roads or facilities under the County's jurisdiction that are not on or along a state highway:

- i. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed, and maintained in compliance with the ADA.

- ii. Agency may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- iii. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

- iv. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.

- c. County shall ensure that any portions of the Project under the County's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, County ensuring that:
    - i. Pedestrian access is maintained as required by the ADA,
    - ii. Any complaints received by County identifying sidewalks, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
    - iii. County, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered,
    - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
    - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
  - d. Maintenance obligations in this section shall survive termination of this Agreement.
8. Agency shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on County's right of way.
  9. Agency, or its consultant's, electrical inspectors shall possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on state highways. The State District 2B Permitting Office shall verify compliance with this requirement prior to construction.
  10. Agency shall provide to State permanent Mylar "as constructed" plans for work on state highways. If Agency redrafts the plans, done in Computer Aided Design and Drafting (CADD) or Microstation, to get the "as constructed" set, and they follow the most current version of the "Contract Plans Development Guide, Volume 1 Chapter 16" [http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev\\_guide/vol\\_1/V1-16.pdf](http://www.oregon.gov/State/HWY/ENGSERVICES/docs/dev_guide/vol_1/V1-16.pdf), Agency shall provide to State a Portable Document Format (PDF) file and a paper copy of the plan set.
  11. County shall be responsible for and pay to the power company 100 percent of the power costs for the Project illumination and traffic signals at the intersections of Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps. County shall require the power company to send invoices directly to County.

12. County shall keep accurate cost accounting of illumination and signal power costs and bill State annually for 50 percent of all power costs incurred for the Project illumination and traffic signals at Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps.
13. County shall continue to be responsible for the maintenance of all County facilities from curb to curb, and all Project improvements made on County right of way in the Project area. This includes any sign bridges in the Project area in County right of way. County shall grant State access to the sign bridge on Sunnyside Road west of the I-205 interchange in order to make updates to necessary highway signing. Any State work on the sign bridges to update signage will be at State's expense.
14. County shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed in Harmony Road, Sunnyside Road, Sunnybrook Blvd., SE 80th Ave., SE 84th Ave., SE 93rd Ave., SE 97th Ave., and SE Stevens Road in such a manner as to provide adequate protection for said detector loops.
15. County shall upon receipt of a fully executed copy of this Agreement and upon receipt of billing from State annually reimburse State for 50 percent of all costs associated with the maintenance of the Project traffic signals at Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps.
16. County will be required to obtain the services of a registered professional engineer to oversee, accept, and document all construction procedures and certify proper construction was performed pursuant to the Project plan and permit. The registered professional engineer will be required to stamp the "As Constructed Plans" and ensure the Project meets State's required standards for the portions of the Project located on or along the Oregon State Highway System (state highway). Construction inspection for this Project will be completed by state-certified inspectors under the direction of the registered professional engineer overseeing the construction and paid for by County.
17. Agency has provided the Project preliminary and final plans and specifications to State's District 2B office for review and written concurrence, including review and concurrence from the Office of the State Traffic Engineer. All signal equipment must be inspected and tested by State's Traffic Systems Services Unit. Any changes to the final plans and specifications shall be provided to the State's District 2B office, which shall coordinate all such review and concurrence of revised plans. All review, inspection, and testing done by the State for the Project will be at Agency's expense.
18. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.

19. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, 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 the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
20. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.
21. Any such indemnification shall also provide that neither the Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon 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 of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
22. Agency and County shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency 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.

23. Agency shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
24. If Agency chooses to assign its contracting responsibilities to a consultant or contractor, Agency shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
25. Agency and its contractor shall follow the Oregon Locate Laws (ORS 757 and OAR 952).
26. For the portions of the Project located on or along the Oregon State Highway System (state highway), Agency or its consultant shall acquire all necessary rights of way according to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. Agency shall provide a letter from Agency's legal counsel certifying that any right of way acquired on State's facility that is to be relinquished to the State has been acquired in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual. The letter shall be routed through the State Region 1 Right of Way Office.
27. Agency shall obtain a permit to "Occupy or Perform Operations upon a State Highway" from assigned State District 2B Project Manager as well as land use permits, building permits, and engineering design review approval from State. Agency agrees to comply with all provisions of said permit(s), and shall require its developers, contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
28. Pursuant to the statutory requirements of ORS 279C.380 Agency shall require their contractor to submit a performance bond to Agency for an amount equal to or greater than the estimated cost of the Project.
29. If Agency enters into a construction contract for performance of work on the Project, then Agency will require its contractor to provide the following:
  - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
  - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
  - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with



coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than \$ 2,000,000 for each job site or location. Each annual aggregate limit will not be less than \$ 4,000,000.

- d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business 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). Combined single limit per occurrence will not be less than \$1,000,000.
- e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.
- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.

30. County grants Agency and State the right to enter onto County right of way for the performance of duties as set forth in this Agreement.

31. Agency is responsible for and ensures that all survey monuments recorded with a county and within or adjacent to the highway right of way shall be preserved in accordance with ORS 209.140 and 209.150. Any such monumentation that is damaged or removed during the course of the Project must be replaced in compliance with ORS Chapter 209 stipulations, the State Right of Way Monumentation Policy, and at Agency's own expense.

32. Agency is also responsible, at its own expense, for replacement of any additional State survey marks or other monumentation not recorded with a county that are damaged or removed during the course of the Project. In the event of such replacement, Agency shall contact State's Geometronics Unit for replacement procedures.

33. If additional right of way is acquired for state highway right of way purposes as a result of the Project, then a right of way monumentation survey is required as defined in ORS 209.150 and 209.155. Agency agrees to provide such a survey, at its own expense, following ORS Chapter 209 stipulations, State Right of Way Monumentation Policy, and State's Geometronics Unit review and approval, and to file the legal survey with the appropriate Agency Surveyor's office as required.

34. Agency and County each certify and represent that the individual(s) signing this Agreement on its behalf has been authorized to enter into and execute this Agreement on its behalf, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind it.
35. County's right of way contact person for this Project is Sharan Hams-LaDuca, Right of Way Program Manager, Clackamas County DTD, 150 Beaver Creek Road, Oregon City, OR 97045, (503) 742-4675, [shamsladuca@co.clackamas.or.us](mailto:shamsladuca@co.clackamas.or.us), or assigned designee upon individual's absence. County shall notify the other Parties in writing, of any contact information changes during the term of this Agreement.
36. Agency's Project Manager for this Project is David Queener, Program Supervisor, Clackamas County Development Agency, 150 Beaver Creek Road, Oregon City, OR 97045, (503) 742-4322, [DavidQue@co.clackamas.or.us](mailto:DavidQue@co.clackamas.or.us). Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

### **STATE OBLIGATION**

1. State shall, upon execution of the agreement, forward to Agency a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$60,000 for payment of the work performed by State under this Agreement. State will review the Project plans, perform periodic inspection for internal documentation purposes, perform signal turn-on, timing, and testing for State owned or maintained signals, and will perform review, approval and acceptance of right of way acquired on the State Highway to be relinquished by the Agency post-construction. State agrees to not incur costs exceeding \$60,000 without first submitting to Agency a request for additional deposit accompanied by an itemized statement of expenditures and an estimated cost to complete Project and receiving Agency's approval.
2. Upon completion of the Project, State shall either send to Agency a bill for the amount which, when added to Agency's advance deposit, will equal 100 percent of the total state costs for Project or State will refund to Agency any portion of said advance deposit which is in excess of the total State costs for Project.
3. State grants authority to Agency and County to enter upon State right of way for the construction of this Project as provided for in the miscellaneous permit to be issued by State District 2B Office.
4. Within fifteen days of notice from Agency that Agency believes all work is complete, State will perform the final inspection of the Project and notify Agency that it agrees all work is complete or give Agency written instruction regarding incomplete or unsatisfactory work. Upon request by Agency, State will promptly re-inspect the Project to confirm the incomplete or unsatisfactory work has been satisfactorily completed. State will issue a Final Acceptance notice to Agency when all work is inspected and accepted.

5. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. State shall be responsible for maintaining the traffic signals and associated illumination at Sunnybrook/I-205, Sunnyside/I-205 Northbound Ramps, Sunnyside/I-205 Southbound Ramps. State shall keep accurate cost accounting records of traffic signal and associated illumination maintenance costs and shall bill County annually for 50 percent of all said costs.
7. State shall upon receipt of a fully executed copy of this Agreement and upon receipt of billing from County annually reimburse County for 50 percent of all power costs associated with the Project traffic signals at Sunnyside/I-205 Northbound Ramps, and Sunnyside/I-205 Southbound Ramps.
8. State shall maintain the asphaltic concrete pavement surrounding the vehicle detector loops installed on Sunnybrook/I-205 Northbound ramps, Sunnyside/I-205 Northbound Ramps, and Sunnyside/I-205 Southbound ramps in such a manner as to provide adequate protection for said detector loops.
9. State's Project Manager for this Project is Jim Bailey, ODOT District 2B, 9200 SE Lawnfield Road, Clackamas, OR 97015, 971-673-6216, james.g.bailey@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
10. State's Right of Way contact for this Project is David Mendelson, Region 1 Right of Way, 123 NW Flanders St., Portland, OR 97209, 503-731-8451, david.mendelson@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## **GENERAL PROVISIONS**

1. This Agreement may be terminated by any Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency and County, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency or County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

- b. If Agency or County fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If Agency fails to provide payment for this Project, including payment to State for work performed by State.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Each Party shall ensure that each of its contractors complies with these requirements.
5. 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 with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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.
6. With respect to a Third Party Claim for which State is jointly liable with any other Party (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 any other Party or Parties in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the other Party or Parties 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 the other Party or Parties 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.

7. With respect to a Third Party Claim for which Agency or County is jointly liable with State (or would be if joined in the Third Party Claim), Agency and County 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 Agency and County 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 Agency and County 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. Agency and County's contribution amount(s) 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.
8. 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.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) 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.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

Agency/County/State  
Agreement No. 32508

**CLACKAMAS COUNTY**, by and through its elected officials

By \_\_\_\_\_  
County Commissioner

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**CLACKAMAS COUNTY DEVELOPMENT AGENCY**,  
by and through its duly appointed board:

By \_\_\_\_\_  
Chair, Development Agency

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**

David Queener, Program Supervisor  
Clackamas County Development Agency  
150 Beaver Creek Road  
Oregon City, OR 97045  
(503)742-4322  
davidque@co.clackamas.or.us

**County Contact:**

Sharan Hams-LaDuca  
150 Beaver Creek Road  
Oregon City, OR 97045  
(503) 742-4675  
shamsladuca@co.clackamas.or.us

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
District 2B Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
State Traffic – Roadway Engineer

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By Jennifer O'Brien  
Assistant Attorney General

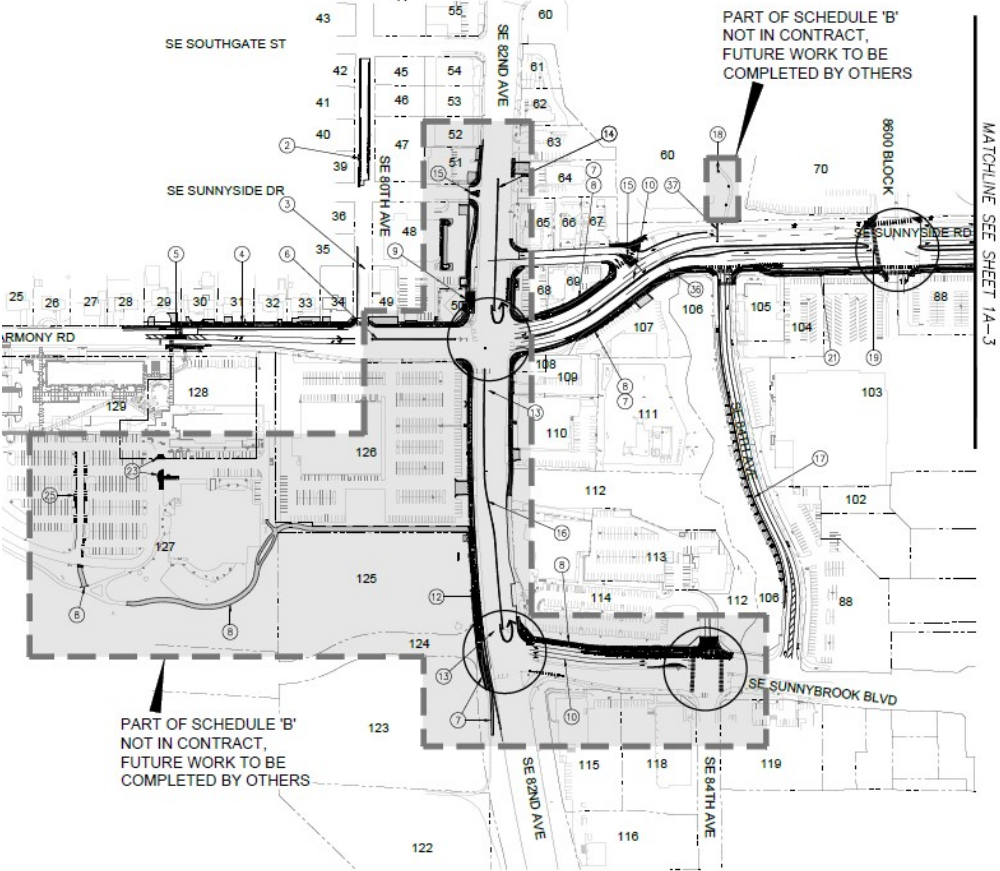
Date via email dated September 2, 2020

**State Contact:**

Jim Bailey  
ODOT District 2B  
9200 SE Lawnfield Road  
Clackamas, OR 97015  
971-673-6216  
james.g.bailey@odot.state.or.us



EXHIBIT A-2 - PROJECT AREAS NOT INCLUDED IN SCOPE





Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment #3 to Contract #1652 with Murraysmith, Inc. for the  
Pump Station Rehabilitation and Upgrades Project

<b>Purpose/Outcomes</b>	Execution of the Amendment #3 for Contract #1652 between Water Environment Services and Murraysmith, Inc. to continue with the Pump Station Rehabilitation and Upgrades.
<b>Dollar Amount and Fiscal Impact</b>	The original contract was for \$238,771.00 for a conceptual design of upgrades to several pump stations. Amendment #1 authorized a time extension, Amendment #2 authorized an additional \$19,992 to add two (2) additional pump stations to the conceptual designs portion of the project. Amendment #3 moves forward with Phase 2 (detailed design and bidding of three projects) of the RFP 2019-55 for an additional \$1,349,710 and time to complete Phase 2. Total Contract value now at \$1,608,473.
<b>Funding Source</b>	WES Funds: 639-01-20100-481010-P632265
<b>Duration</b>	Extend the Contract end date to December 31, 2023.
<b>Previous Board Action</b>	Original Contract approved November 14, 2019 Board # 111419 Vii 2.
<b>Strategic Plan Assignment</b>	This project supports the WES Strategic Plan goal to provide properly functioning infrastructure that supports healthy streams and reduces flooding.
<b>Procurement Review</b>	1. Was this item processed through Procurement? <input checked="" type="checkbox"/> yes <input type="checkbox"/> no 2. If no, provide a brief explanation:
<b>County Review</b>	January 4, 2021, AK
<b>Contact Person</b>	Jessica Rinner, 503-742-4551

**BACKGROUND:**

Clackamas Water Environment Services (“WES”), referred to as “District”, entered into a contract with MurraySmith, Inc. for consulting services on the Pump Station Rehabilitation and Upgrades project on November 14, 2019. The Project includes seven (7) sanitary sewer pump stations that will be upgraded: Sieben Lane, Gladstone, Clackamas, Willamette, Timberline Rim, Golf Club Terrace, and South Welches. The Project is structured in three phases. The first phase has been completed and involved evaluating the existing conditions at each pump station and documenting the recommended upgrades. The second phase is the design, permitting, and bidding services to complete the upgrades recommended in Phase 1. A third phase, if desired, will be engineering services during construction.

The pump stations were all constructed between 1970 and 1995. Although there have been some upgrades made at each station since they were originally constructed, maintenance staff have had increasing difficulty operating and maintaining these stations in the recent years due to more frequent equipment failure and difficulty repairing obsolete equipment.

**PROCUREMENT PROCESS:**

This Amendment is in accordance with LCRB C-047-0800(a) (A), Anticipated Amendments. The original RFP 2019-55 Scope of Work anticipated a total of 3 Phases.

**RECOMMENDATION:**

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Amendment #3 between Water Environment Services and Murraysmith, Inc. for the Pump Station Rehabilitation and Upgrades project.

Respectfully submitted,

Signature:   
Greg Geist [Jan 12, 2021 09:14 PST]  
Email: [ggeist@clackamas.us](mailto:ggeist@clackamas.us)

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ Agenda by the Procurement

**AMENDMENT #3**  
**TO THE CONTRACT DOCUMENTS WITH MURRAYSMITH, INC. FOR 2019-55 PUMP STATION**  
**REHABILITATION AND UPGRADES**  
**Contract #1652**

This Amendment #3 is entered into between Murraysmith, Inc. (“Contractor”) and Water Environment Services (“District”) and shall become part of the Contract documents entered into between both parties on November 14, 2019 (“Contract”).

The Purpose of this Amendment #3 is to make the following changes to the Contract:

1. ARTICLE 1, Section 1, **Effective Date and Duration** is hereby amended as follows:  
 The Contract expiration date is hereby changed from December 1, 2020 to **December 31, 2023**.
  
2. ARTICLE I, Section 2. **Scope of Work** is hereby amended as follows:  
 Upon completion of the schematic design for eight pump stations, District is moving forward with Phase 2 per the RFP 2019-55 for Final Design, Permitting and Bid Period Support. The supplemental Scope of Work is attached as **Exhibit E** and hereby incorporated by reference. Attachments to Exhibit E include the Drawing list, Technical Specification and Project Schedule.
  
3. ARTICLE 1, Section 3. **Consideration** is hereby amended as follows:  
 The additional compensation to add Phase 2 is **\$1,349,710.00**. The additional fee schedule is included at the end of Exhibit E. The total Contract Consideration shall not exceed \$1,608,473.00.

ORIGINAL CONTRACT	\$ 238,771.00
AMENDMENT #1	Allow Travel and other Expense
AMENDMENT #2	\$ 19,992.00 + Time Extension
<b><u>AMENDMENT #3</u></b>	<b><u>\$ 1,349,710.00 + Time Extension</u></b>
<b>TOTAL AMENDED CONTRACT</b>	<b>\$ 1,608,473.00</b>

Except as expressly amended above, all other terms and conditions of the Contract shall remain in full force and effect. By signature below, the parties agree to this Amendment #3, effective upon the date of the last signature below.

**Murraysmith, Inc.**

**Water Environment Services**

**Adam Crafts** 2020.12.24  
 08:52:34-08'00'

\_\_\_\_\_  
 Authorized Signature                      Date

\_\_\_\_\_  
 Chair

Adam Crafts, Principal Engineer  
 Printed Name

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

\_\_\_\_\_  
 Date

**Approved as to form**

  
 \_\_\_\_\_  
 County Counsel

**1/4/2020**  
 \_\_\_\_\_  
 Date

# EXHIBIT E

## SCOPE OF WORK PUMP STATION REHABILITATION AND UPGRADES

### FINAL DESIGN, PERMITTING, AND BIDDING SERVICES PHASE CLACKAMAS WATER ENVIRONMENT SERVICES

#### Introduction

Clackamas Water Environmental Services (WES) recently completed schematic design for eight pump stations (PS) to outline proposed improvements to increase reliability and improve safety and operational efficiency. A professional services contract was executed to complete condition assessments for the pump stations, develop project parameters, and identify improvements for the projects. WES selected seven of the pump stations to move forward with the recommended improvements.

This amendment provides services to perform final design of the improvements, prepare construction contract documents, obtain permits and approvals, and support WES staff during the bidding phases for the projects. Task numbering is a continuation from the original contract's scope of work.

#### General Assumptions

- Design of improvements for seven pump stations will be completed and grouped into three bid sets as follows:
  - Bid Set No. 1: Clackamas and Timberline Rim Pump Stations
  - Bid Set No. 2: Gladstone and Sieben Lane Pump Stations
  - Bid Set No. 3: South Welches, Golf Club Terrace, and 82nd Drive Pump Stations
- Each bid set will be publicly bid once.
- Stormwater system inspection and construction certification is not in this contract.
- Vegetated buffer enhancements, invasive species removal and replanting plans are assumed to be performed by WES staff and are therefore not included in this contract.
- Improvements to building structure to meet current building code, where not required due to modifications, are not included.

- Consultant shall submit minutes from each workshop not later than 5 working days following each respective workshop. Written responses to the comments will be provided by the Consultant. WES staff will provide written review comments within two weeks.
- District will furnish required information, examine deliverables submitted by Consultant, and render decisions and approvals in a timely manner.
- Consultant shall use 49 Division format master specifications. Consultant shall provide Division 1 and technical specifications for project use and District review and comment.
- Where deliverable documents are identified, hereinafter, deliverable will be provided in electronic .PDF and original .DOC format.
- Drawings (11-inch by 17-inch) in .PDF format will be provided for each District internal review.
- The Consultant's standard CAD software shall be used to produce the drawings following its own drafting standards.
- Project coordination and design review meetings will be via ZOOM or equivalent unless otherwise noted and attended by Murraysmith's Project Manager and Project Engineer. Multi-disciplinary subconsultants will be included as needed or requested by the District.

## District Provided Services

District will provide:

- Site access coordination, as requested.
- Private utility location, topographic and tree surveys, and environmental delineation boundaries.
- Legal descriptions for easements or right-of-way acquisitions associated with the project. Project-specific Division 0 specifications that include Instructions to Bidders, Bid Documents, Contract forms, General and Supplementary Conditions.
- Bid advertisement; Plan holders list; communication with not, and plan holders; addenda; and receiving, opening and reviewing bids.

## Task 1 - Project Management (Existing Task Supplement)

### *Objective*

Provide leadership and team strategic guidance aligned with District staff objectives. Coordinate, monitor, and control the project resources to meet the technical, communication, and contractual obligations required for developing and implementing the project scope.

Consultant shall:

- Manage design team to project schedule and budget.
- Coordinate with District for design input or decisions in between design submittals.
- Document key decisions in decision log.
- Prepare invoices and progress reports.

### *Deliverables*

- Decision Log.
- Monthly invoices with progress report, task-level budget report.
- Monthly schedule update.

## **Task 6 – Quality Management (Existing Task Supplement)**

### *Objective*

Perform quality assurance tasks to monitor the quality of the Project using internal quality assurance/quality control (QA/QC) reviews as described herein. Reviews shall be performed by staff independent of the design team.

Consultant shall:

- Prepare Quality Management Plan (QMP) to outline anticipated review activities at project milestones.
- Review process and cost calculations.
- Perform QC review of deliverables prior to submitting to WES.
- Verify conformance with the approved QMP.

### *Deliverables*

- Quality Management Plan to include:
  - Identification of a single point of contact responsible for quality management.
  - Proposed design review procedures at project milestones
  - Review confirmation forms from independent quality review
- Quality review forms used during internal quality reviews

## **Task 7 – Prepare 60% Design Development Documents**

### *Objective*

The purpose of this task is to advance the Schematic Design (Tasks 2, 3, 4, and 5). The 60% documents shall include Divisions 0 and 1, equipment, materials, and common details,

standardized across bid packages, specifications for major equipment, and depict the final location and size of major components and systems. The design submittals will be grouped in bid sets outlined in the General Assumptions listed above.

Consultant shall:

### *General Activities for All Facilities*

- Prepare and facilitate design kick off meeting to identify common standards for equipment, materials, and details.
- Finalize equipment selection and collect equipment data sheets.
- Finalize electrical service load calculations and coordinate service upgrade requirements with power utility.
- Develop control narratives for each pump station.
- Design and layout MCC, control panels, generators, ATS, and other electrical equipment and level control systems.
- Develop demolition plans and details for existing facilities.
- Develop plans to maintain service during construction.
- Design and layout mechanical piping and HVAC improvements.
- Outline site impact area and note restoration requirements.
- Develop common details for each required discipline.
- Develop recommendations for construction sequencing and duration estimate for each bid package.
- Facilitate one interim design meeting with WES staff to review design development prior deliverable submittal.
- Review and coordinate Division 0 specifications provided by WES for specific project.
- Prepare 60% Design level drawings for each bid set as noted in the Drawing List included in Attachment A.
- Develop Division 01 Technical Specifications for each bid set as noted in the Technical Specifications List included in Attachment B.
- Develop technical specifications for major equipment for each bid set as noted in the Technical Specifications List included in Attachment B.

- Prepare 60% design construction cost estimate for each bid set (3 total).
- Conduct two-hour 60% design review meeting for each bid set (3 total).

#### *Specific Activities for Clackamas Pump Station*

- Design replacement lids with new access hatches for the wet well and pneumatic valve vault.
- Develop details to retrofit gutters and downspouts.
- Design split heating and air conditioning system for building.
- Design exterior lighting for pump station building.
- Specify coating repair for piping in valve vault.

#### *Specific Activities for Timberline Rim Pump Station*

- Develop sizing and layout for fans and ducting to declassify space in accordance with NFPA 820.
- Design new control panel and level control system to fit into available space in electrical room. Integrate controls into the existing MCC.
- Provide details to relocate pump disconnect panel to meet NEC clearance requirements.

#### *Specific Activities for Gladstone Pump Station*

- Finalize location and configuration for bypass tee connection. Finalize geohazard potential study.
- Develop layouts for process piping to accommodate new pumps and valves, realign piping to exit the north wall.
- Prepare plan and elevation for bypass vault.
- Develop new force main alignment to connection point approximately 150 feet northwest of pump station.
- Coordinate three-phase service upgrade with power utility.
- Size and specify new dri-pit submersible sump pumps and base foundation.
- Design new pump disconnect panel with removable plugs.



- Develop sizing and installation details for generator and ATS replacement in existing locations.
- Develop sizing and layout for fans and ducting to declassify space in accordance with NFPA 820.
- Design replacement lighting plan for new LED building fixtures and include lateral bracing for seismic mitigation.
- Design new wet well access maintenance platform.
- Specify wet well rehabilitation and epoxy liner material and thickness.
- Design gantry beam for pump removal from base elbow within the pump room.
- Prepare details for replacement of potable water RPBA.
- Design new influent manhole access lid with access hatch, safety grate, and hand railing.
- Prepare standalone coating specification in Oregon DOT format to recoat the exposed Gladstone force main for WES future reference.

#### *Specific Activities for Sieben Lane Pump Station*

- Size and specify new submersible pumps.
- Design new process piping and valves to fit within the existing vault.
- Size and locate new generator and ATS.
- Design new top slab with vault hatches and safety grating for existing wet well.
- Design new retrofit valve vault hatches in existing top slab.
- Provide details for abandonment of existing air injection system.
- Design new pump disconnect panel with removable plugs.
- Develop sizing and layout for new control room ventilation fan and louver.

#### *Specific Activities for South Welches Pump Station*

- Size and specify new submersible pumps.
- Design process piping and new valve vault with bypass connection.
- Design new top slab with vault hatches and safety grating for existing wet well.

- Design new pump disconnect panel with removable plugs.
- Confirm if MCC and Control panel will meet NEC clearance requirements within the existing building.
- Size and locate new diesel generator and ATS on the site.
- Design new metal roof for existing building, including new roof framing, connections, and sheathing.
- Design access road plan and profile generally following the existing alignment.
- Perform a total of four shallow encased falling head infiltration tests, with three locations along the existing golf cart path and at one location at the existing pump station. Adhere to District requirements and provide memo summarizing testing procedure and results.
- Design infiltration swales to manage stormwater for pump station site and access road meeting Clackamas County stormwater standards. Prepare draft stormwater report.
- Coordinate landscaping restoration preferences with Mt. Hood Resort staff and develop landscape planting plans.

#### *Specific activities for Golf Club Terrace Pump Station*

- Size and specify submersible pumps.
- Finalize electrical service load calculations and coordinate conversion of power service to underground configuration.
- Design process piping and new valve vault with bypass connection.
- Design new top slab with vault hatches and safety grating for existing wet well.
- Design new pump disconnect panel with removable plugs.
- Layout MCC and control panel to meet NEC clearance requirements within the existing building.
- Size and locate new diesel generator and ATS on the site.
- Design new flat roof for existing building, including new roof framing, connections, and sheathing.

#### *Specific activities for 82<sup>nd</sup> Drive Pump Station*

- Size and specify submersible pumps.

- Design process piping and new valve vault with bypass connection.
- Design new top slab with vault hatches and safety grating for existing wet well.
- Design new pump disconnect panel and MCC.
- Specify new exterior lighting system with manual control.

### *Deliverables*

- 60% Design Development Drawings for each bid set, see attached Drawing List in Attachment A.
- Division 01 Technical Specification as specified for each bid set (3 total). See attached Specification List in Attachment B.
- Equipment Data Sheets and Technical Specifications for major equipment for each bid set (3 total). See attached Specification List in Attachment B.
- 60% Construction Cost Estimate and bid item list for each bid set (3 total).
- 60% Construction Sequence Narrative and Duration Estimate for each bid set (3 total).
- Draft Stormwater Report for South Welches Pump Station.
- Meeting agenda and summary for design kick off and standards development meeting.
- Meeting agenda and summary for interim design coordination meeting.
- Meeting agenda and summary for 60% review workshops for each bid set (3 total).

### *Assumptions*

- Roof replacement at South Welches and Golf Club Terrace will follow the existing configuration. Changes to the configuration may warrant additional structural evaluation and design is loading increases over existing conditions.
- Major equipment is defined as pumps, generator, fans, and flow meters.

## **Task 8 –Prepare 90% Contract Documents**

### *Objective*

The purpose of this task is to develop 90% Contract Documents for each of the three bid sets.

Consultant shall:

- Review and address 60% design review comments from WES staff or other stakeholders.
- Prepare 90% Design level drawings for each bid set as noted in the Drawing List included in Attachment A.
- Prepare technical specifications to include Division 01 through Division 48 for general requirements, materials, submittals, equipment, installation, and warranty requirements. See attached Specification List in Attachment B.
- Prepare Class 1 Construction Cost Estimate for each bid set.
- Update construction sequence and duration estimates.
- Facilitate one interim design meeting with WES staff to review design development prior deliverable submittal.
- Conduct one two-hour meeting for each bid set to review the 90% design submittal with District staff (3 meetings total).

### *Deliverables (for each of three bid sets)*

- 90% Design Development Drawings, see attached Drawing List in Attachment A.
- 90% Construction Specifications
- 90% Construction Cost Estimate
- Meeting agenda and summaries for interim check-in design
- Meeting agenda and summaries for 90% review workshop (3 meetings)
- Documentation of resolution of District and other external stakeholder 60% review comments.

## **Task 9 – Prepare Bid Documents**

### *Objective*

Prepare final, sealed contract documents to be used for publicly bidding the three (3) separate projects. Consultant shall:

- Address District, County Development, ODOT comments and modify the contract documents to address comments.
- Prepare reproducible final documents and submit to WES.
- Prepare final stormwater report for South Welches Pump Station.

## *Deliverables*

- Final stamped construction documents in PDF format for each bid set (3 total).
- Final Stamped Stormwater Report for South Welches Pump Station.
- Design drawing files in AutoCAD and PDF formats.

## *Assumptions*

- Standard details bound as 8.5 IN x 11 IN sheets separately and will be provided in PDF format only.

## Task 10 – Permits and Approvals

### Objective

Assist WES in obtaining permits and land use approvals from the local review authorities needed to construct the projects. The anticipated approvals are listed in Table 1 below.

**Table 1**  
**Anticipated Permits and Land Use Approvals**

Pump Station / (Review Agency)	Land Use Approval	Environmental Permitting	Other Permits	Land Use Review Period
Gladstone / (City of Gladstone contracts land use review to Clackamas County)	Conditional use for improvements outside of building [1]	None	Building Permits [2] (S,E,M,P)	150 days
82 <sup>nd</sup> Drive / (ODOT)	Not Required	Not Required	ODOT ROW Permit	Unknown, assumed 60 days
Clackamas / (Clackamas County)	Conditional approved; exempt if building expansion is less than 10%	None	Trade Permits [2] (E,M)	None [3]
Sieben Lane, Timberline Rim, South Welches Golf Club Terrace / (Clackamas County)	Type III Conditional Use Review [4]	County River Service and Stream Conservation compliance for additional encroachment over existing conditions	Trade Permits [2] (S,E,M,P)  Erosion Control Permit [5]	180 days

*Notes:*

[1] The City of Gladstone contracts its land use review to Clackamas County.

[2] Building permits include structural review for equipment anchorage (S) and trade electrical (E), mechanical (M), and plumbing (P) permits from Clackamas County.

[3] Clackamas Pump Station may be exempt from land use review. It has conditional approval on file with Clackamas County and will not increase the building footprint.

[4] Clackamas County does not have conditional approval on file with Clackamas County. These pump stations are anticipated to require a Type III review with a Plans Examiner.

[5] Erosion control permit are expected at Sieben Lane, South Welches, and Golf Club Terrace. The permits will be obtained through the land use review process.

Consultant shall:

- Conduct Pre-application Conferences:
  - Prepare pre-app applications for the City of Gladstone (for the Gladstone Pump Station) and Clackamas County (for the Sieben Lane, Golf Club Terrace, and South Welches Pump Stations for Clackamas County).
  - Confirm exemption status from Section 704 River and Stream Conservation Area of the Clackamas County Zoning Development code for the Gladstone, South Welches, Timberline Rim, and Golf Club Terrace pump stations based on improvements not encroaching further into the riparian buffer area than existing structures.
  - Attend pre-app meetings with each agency.
- Land Use Applications
  - Prepare list of figures needed for each land use application.
  - Prepare land use applications and revise as needed.
  - Participate in Clackamas County public hearing process, as authorized.
- Erosion Control Permits
  - Development activity exceeding 800 square feet requires an Erosion Control Permit from the WES. Prepare application materials and submit application on behalf of WES.
- Building and Trade Permit Plan Review
  - Prepare stamped permit sets for each pump station as required for building or trade permit reviews.
  - Prepare final stamped structural calculations for each bid set (3 total).

### *Deliverables*

- Pre-application Conferences
  - Pre-application submittal packages for City of Gladstone and Clackamas County.
  - Guidance memorandum for preparation of land use submittal packet.
- Land Use Applications
  - List of figures needed for each pre-application conference
  - Application submittal package including application forms, narrative, and draft findings

- Clackamas County hearing packet, as needed
- Erosion Control Permits
  - Erosion Control Permit application submittal package for each bid set (3 total).
- Building and Trade Permits
  - Permit plan sets in pdf files for each bid set (3 total).
  - Stamped structural calculations in pdf for each bid set (3 total).

### *Assumptions*

- Two separate land use applications will be prepared as follows:
  - Gladstone Pump Station for the City of Gladstone.
  - Sieben Lane, Golf Club Terrace, and South Welches Pump Stations for Clackamas County.
- WES will sign necessary application forms and pay application fees.
- South Welches pump station and access road will be exempt from River and Stream Conservation Area compliance and will be allowed within the Salmon River vegetated buffer. A Natural Resource Assessment report, if requested by Clackamas County Planning, will be prepared by Clackamas WES.
- Wetland impacts are not anticipated. A wetland delineation of the pump station sites is not necessary.
- State or federal environmental permits are not anticipated nor included in the scope of work.
- A DEQ 1200C permit will not be required.
- 90% design drawings shall be submitted for building and trade permits

## **Task 11 - Bid Period Services**

### *Objective*

Provide support to WES staff during bid phase of for each of the three bid sets.

Consultant shall:

- Attend one pre-bid conference for each set (3 total).



- Review and respond to Bidder questions.
- Prepare technical material for addenda, as needed.
- Review bids as requested by the District..

### *Deliverables*

- Technical material for addenda, as needed.

### *Assumptions*

- Two addenda are budgeted for each bid set (6 total).

## **Anticipated Project Milestones**

- The anticipated project schedule and milestones are outlined in Attachment C.

## **Attachments**

- A: Drawing List
- B: Technical Specification List
- C: Anticipated Project Schedule



# ATTACHMENT A

## DRAWING LIST

### PUMP STATION REHAB AND UPGRADES CLACKAMAS WES

The following list of drawings are anticipated for the subject project. Three bid set will be prepared with pump stations grouped as shown. Drawing for each discipline will be organized by facility.

---

\*Denotes drawings to be included with 60% PS&E

#### Bid Set 1: Clackamas and Timberline Rim Pump Station Improvements (66 drawings)

##### *General (11 drawings)*

- Cover\*
- General Notes and Legend
- Design Data Table and System Curves\*
- Schedule and Sheet Key Plan
- General Erosion Control Notes and Details
- General Civil Details (2 sheets)
- General Mechanical Details (2 sheets)
- Electrical Standard Details
- Instrument Standard Details

##### *Schedule A: Clackamas Pump Station Improvements (30 drawings)*

##### *Civil (5 drawings)*

- Site Preparations and Bypass Pumping Plan\*
- Electrical and Generator Room Demolition Plan\*
- Wet Well and Vault Hatch Replacement Plan\*
- Site Plan\*
- Civil Details

##### *Architectural (1 drawing)*

- Roof Plan with Gutter and Downspouts Details

### *HVAC (3 drawings)*

Electrical and Generator Room HVAC Plan and Schedules\*  
Bathroom HVAC Plan and Schedule\*  
HVAC Details

### *Structural (2 drawings)*

General Notes & Quality Assurance Plan\*  
Pump Gantry Plan and Details\*

### *Electrical (9 drawings)*

Electrical Legend and Abbreviations\*  
Electrical Site Plan\*  
One-Line Diagram\*  
Electrical Room Power Plan\*  
Electrical Building\*  
Electrical Grounding Plan\*  
Electrical Panel Schedules\*  
Electrical Circuit Schedule\*  
Motor Control Diagrams\*

### *Instrumentation & Controls (10 drawings)*

P&ID  
Control Panel IO List\*  
Control Panel Layout 1\*  
Control Panel Layout 2\*  
Control Panel Power Distribution\*  
Control Panel Digital Inputs\*  
Control Panel Digital Outputs\*  
Control Panel Analog Inputs\*  
Control Panel Analog Outputs\*  
Control Demolition Plan

## *Schedule B: Timberline Rim Pump Station Improvements (25 drawings)*

### *Civil (3 drawings)*

Pump Station Site Preparation and Erosion Control Plan\*  
Bypass Pumping Plan and Details\*  
Electrical Demolition Plan\*

### *HVAC (3 drawings)*

- HVAC Plan and Schedules\*
- HVAC Elevations
- HVAC Details

### *Electrical (9 drawings)*

- Electrical Legend and Abbreviations\*
- Electrical Site Plan\*
- One-Line Diagram\*
- Electrical Room Power Plan\*
- Electrical Building\*
- Electrical Grounding Plan\*
- Electrical Panel Schedules\*
- Electrical Circuit Schedule\*
- Motor Control Diagrams\*

### *Instrumentation & Controls (10 drawings)*

- P&ID
- Control Panel IO List\*
- Control Panel Layout 1\*
- Control Panel Layout 2\*
- Control Panel Power Distribution\*
- Control Panel Digital Inputs\*
- Control Panel Digital Outputs\*
- Control Panel Analog Inputs\*
- Control Panel Analog Outputs\*
- Control Demolition Plan\*

## **Bid Set 2: Gladstone and Sieben Lane Pump Station Improvements (93 drawings)**

### *General (11 drawings)*

- Cover\*
- General Notes and Legend
- Design Data Table and System Curves\*
- Schedule and Sheet Key Plan
- General Erosion Control Notes and Details
- General Civil Details (2 sheets)

General Mechanical Details (2 sheets)  
Electrical Standard Details  
Instrument Standard Details

## *Schedule A: Gladstone Pump Station Improvements (48 Drawings)*

### *Civil (10 drawings)*

Site Preparation and Erosion Control\*  
Bypass Pumping Plan and Details  
Site Demolition Plan\*  
Electrical and Generator Room Demolition Plan\*  
Pump and Intermediate Rooms Demolition Plan\*  
Wet Well Demolition Plan and Elevation\*  
Site Plan\*  
Surfacing and Grading Plan  
Force Main Plan and Profile\*  
Civil Details

### *Mechanical (9 drawings)*

Pump Room Plan and Details\*  
Pump Room Elevations  
Intermediate Room Plan and Details\*  
Intermediate Room Sections  
Bypassing Vault Plan and Sections\*  
Wet Well Rehabilitation and Coating Plan \*  
Sump Pump Replacement Plan and Details  
Mechanical Details (2 drawings)

### *HVAC (5 drawings)*

Electrical and Pump Room HVAC Plan and Schedules\*  
Electrical and Pump Room HVAC Elevations  
Generator Room HVAC Plan and Schedule\*  
Generator Room HVAC Elevations  
HVAC Details

### *Structural (5 drawings)*

General Notes & Quality Assurance Plan\*  
Pump Gantry Plan and Details\*  
Wet Well Platform Elevation and Details\*  
Influent Manhole Hatch and Railing Plan

Influent Manhole Hatch and Railing Details\*

*Electrical (9 drawings)*

Electrical Legend and Abbreviations\*  
Power Service Plan\*  
One-Line Diagram\*  
Electrical Site Plan\*  
Electrical Building Plan\*  
Electrical Grounding Plan\*  
Electrical Panel Schedules  
Electrical Circuit Schedule  
Motor Control Diagrams

*Instruments & Controls (10 drawings)*

P&ID  
Control Panel IO List\*  
Control Panel Layout 1\*  
Control Panel Layout 2\*  
Control Panel Power Distribution\*  
Control Panel Digital Inputs\*  
Control Panel Digital Outputs\*  
Control Panel Analog Inputs\*  
Control Panel Analog Outputs\*  
Control Demolition Plan

*Schedule B: Sieben Lane PS Improvements (34 drawings)*

*Civil (9 drawings)*

Site Preparation and Erosion Control\*  
Bypass Pumping Plan and Details  
Site Demolition Plan\*  
Electrical Demolition Plan\*  
Wet Well and Valve Vault Demolition Plan  
Site Plan\*  
Site Piping Plan and Profile\*  
Grading and Surfacing Plan  
Civil Details

*Mechanical (4 drawings)*

Wet Well Plan and Details\*

Wet Well Sections\*  
Valve Vault Plan and Sections\*  
Mechanical Details

*HVAC (1 drawing)*

Electrical Room HVAC Plan and Schedules\*

*Structural (2 drawings)*

General Notes & Quality Assurance Plan\*  
Generator Foundation Plan and Section\*

*Electrical (8 drawings)*

Electrical Legend and Abbreviations\*  
One-Line Diagram\*  
Electrical Site Plan\*  
Electrical Building Plan\*  
Electrical Grounding Plan\*  
Electrical Panel Schedules  
Electrical Circuit Schedule  
Motor Control Diagrams

*Instruments & Controls (10 drawings)*

P&ID  
Control Panel IO List\*  
Control Panel Layout 1\*  
Control Panel Layout 2\*  
Control Panel Power Distribution\*  
Control Panel Digital Inputs\*  
Control Panel Digital Outputs\*  
Control Panel Analog Inputs\*  
Control Panel Analog Outputs\*  
Control Demolition Plan

**Bid Set 3: South Welches, Golf Club Terrace, and 82<sup>nd</sup> Drive Pump Station Improvements (114 Drawings)**

*General (11 drawings)*

Cover\*



General Notes and Legend  
Design Data Table and System Curves\*  
Schedule and Sheet Key Plan  
General Erosion Control Notes and Details  
General Civil Details (2 sheets)  
General Mechanical Details (2 sheets)  
Electrical Standard Details  
Instrument Standard Details

## *Schedule A: South Welches PS Improvements (45 drawings)*

### *Civil (15 drawings)*

Pump Station Site Preparation and Erosion Control\*  
Cart Path Site Preparation and Erosion Control\*  
Pump Station Tree Protection Plan\*  
Cart Path Tree Protection Plan\*  
Bypass Pumping Plan and Details\*  
Pump Station Demolition Plan\*  
Site Plan\*  
Pump Station Grading and Surfacing Plan\*  
Pump Station Storm Water Plan and Section\*  
Cart Path Plan and Profile (2 sheets)\*  
Cath Path Storm Water Plan and Section (2 sheets)\*  
Civil Details (2)

### *Architectural (2 drawings)*

Building Roof Section and Details  
Architectural Details

### *Mechanical (3 drawings)*

Wet Well and Vault Plan\*  
Wet Well and Vault Sections\*  
Mechanical Details

### *Building HVAC (1 drawing)*

Electrical Room HVAC Plan and Schedules\*

### *Structural (2 drawings)*

General Notes & Quality Assurance Plan\*  
Building Roof Framing and Sheathing Plan

### *Electrical (8 drawings)*

Electrical Legend and Abbreviations\*  
One-Line Diagram\*  
Electrical Site Plan\*  
Electrical Building Plan\*  
Electrical Grounding Plan\*  
Electrical Panel Schedules  
Electrical Circuit Schedule  
Motor Control Diagrams

### *Instruments & Controls (10 drawings)*

P&ID  
Control Panel IO List\*  
Control Panel Layout 1\*  
Control Panel Layout 2\*  
Control Panel Power Distribution\*  
Control Panel Digital Inputs\*  
Control Panel Digital Outputs\*  
Control Panel Analog Inputs\*  
Control Panel Analog Outputs\*  
Control Demolition Plan

### *Landscape (4 drawings)*

Cart Path Swale and Landscape Plan (2 drawings)\*  
Pump Station Landscape Plan\*  
Landscape Details

## *Schedule B: Golf Club Terrace PS Improvements (32 Drawings)*

### *Civil (6 drawings)*

Pump Station Site Preparation and Erosion Control\*  
Bypass Pumping Plan and Details\*  
Pump Station Demolition Plan\*  
Site Plan\*

Surfacing and Grading Plan  
Civil Details

*Architectural (2 drawings)*

Building Roof Demolition and Roof Plan  
Building Roof Section and Details

*Mechanical (3 drawings)*

Wet Well and Vault Plan\*  
Wet Well and Vault Sections\*  
Mechanical Details

*Building HVAC (1 drawing)*

Electrical Room HVAC Plan and Schedules\*

*Structural (2 drawings)*

General Notes & Quality Assurance Plan\*  
Building Roof Framing and Sheathing Plan

*Electrical (8 drawings)*

Electrical Legend and Abbreviations\*  
One-Line Diagram\*  
Electrical Site Plan\*  
Electrical Building Plan\*  
Electrical Grounding Plan  
Electrical Panel Schedules  
Electrical Circuit Schedule  
Motor Control Diagrams

*Instruments & Controls (10 drawings)*

P&ID  
Control Panel IO List\*  
Control Panel Layout 1\*  
Control Panel Layout 2\*  
Control Panel Power Distribution\*

Control Panel Digital Inputs\*  
Control Panel Digital Outputs\*  
Control Panel Analog Inputs\*  
Control Panel Analog Outputs\*  
Control Demolition Plan

### *Schedule C: 82<sup>nd</sup> Drive PS Improvements (26 drawings)*

#### *Civil (5 drawings)*

Pump Station Site Preparation and Erosion Control\*  
Bypass Pumping Plan and Details\*  
Site Plan\*  
Surfacing and Grading Plan  
Civil Details

#### *Mechanical (3 drawings)*

Wet Well and Vault Plan\*  
Wet Well and Vault Sections\*  
Mechanical Details

#### *Electrical (8 drawings)*

Electrical Legend and Abbreviations\*  
One-Line Diagram\*  
Electrical Site Plan\*  
Electrical Building Plan\*  
Electrical Grounding Plan\*  
Electrical Panel Schedules  
Electrical Circuit Schedule  
Motor Control Diagrams

#### *Instruments & Controls (10 drawings)*

P&ID  
Control Panel IO List\*  
Control Panel Layout 1\*  
Control Panel Layout 2\*  
Control Panel Power Distribution\*  
Control Panel Digital Inputs\*  
Control Panel Digital Outputs\*  
Control Panel Analog Inputs\*  
Control Panel Analog Outputs\*  
Control Demolition Plan

# ATTACHMENT B

## TECHNICAL SPECIFICATIONS PUMP STATION REHAB AND UPGRADES CLACKAMAS COUNTY WES

The following list of specifications are anticipated for the subject project. These specifications will be included in each of the three bid sets that will be prepared under the design scope of work.

\*Denotes specifications that will be edited specifically for each of the three bid sets that will be prepared.

(60) Denotes specifications developed for 60% design submittal for construction work sequencing and major equipment.

Section	Title	Page Ct.
<i>Division 01 – General Requirements</i>		
01 10 00	Summary of Work* (60)	1-17
01 12 16	Work Sequence * (60)	1-8
01 22 20	Unit Price Measurement and Payment* (60)	1-3
01 33 00	Submittal Procedures (60)	1-11
01 45 00	Quality Control* (60)	1-5
01 56 39	Temporary Tree and Plant Protection (60)	1-5
01 57 19.11	Temporary Sewage Control and Bypass Piping* (60)	1-6
01 75 16	Testing, Training and System Start-Up (60)	1-8
<i>Division 02 - Existing Conditions</i>		
02 30 00	Subsurface Investigation*	1-1
02 41 00	Demolition	1-7
<i>Division 03 - Concrete</i>		
03 01 30.71.11	Concrete Rehabilitation	1-8
03 11 00	Concrete Work	1-27
03 60 00	Grouting	1-4

### *Division 05 - Metals*

05 50 00	Metal Fabrications*	1-20
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### *Division 07 - Thermal and Moisture Protections*

07 41 13	Metal Roof Panels	1-4
07 60 00	Flashing and Sheet Metal	1-5
07 92 00	Sealants and Caulking	1-3

### *Division 08 - Openings*

08 91 19	Fixed Louvers	1-5
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### *Division 09 - Finishes*

09 90 00	Painting and Coating	1-20
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### *Division 10 – Specialties*

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### *Division 23 – Heating, Ventilating, and Air Conditioning (HVAC)*

23 05 93	Testing, Adjusting, and Balancing for HVAC	1-4
23 09 13	Instrumentation and Control Devices for HVAC	1-7
23 31 13	Air Ducts and Accessories	1-22
23 34 00	HVAC Fans* (60)	1-11

### *Division 26 - Electrical*

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26 05 26	Grounding and Bonding for Electrical Systems	1-5
26 05 29	Electrical Hangers and Supports for Electrical Systems	1-10
26 05 33	Raceway and Boxes for Electrical Systems	1-8
26 05 53	Identification for Electrical Systems	1-5
26 24 19	Motor Control Equipment* (60)	1-16

26 27 00	Service and Distribution	1-6
26 27 16	Cabinets and Enclosures* (60)	1-3
26 27 26	Wiring Devices	1-3
26 29 23	Variable Frequency Drives (60)	1-14
26 32 13	Standby Power System* (60)	1-14
26 35 26	Active Harmonic Filter	1-7
26 50 00	Lighting	1-4

### *Division 31 - Earthwork*

31 05 13	Soils for Earthwork	1-5
31 05 16	Aggregates for Earthwork	1-6
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31 22 13	Rough Grading	1-4
31 23 16	Excavation	1-8
31 23 17	Trenching	1-22
31 23 18	Rock Removal	1-4
31 23 19	Dewatering*	1-4
31 23 23	Fill	1-8
31 23 24	Flowable Fill	1-6
31 50 00	Excavation Support and Protection	1-5

### *Division 32 - Exterior Improvements*

32 11 23	Aggregate Base Courses	1-6
32 12 16	Asphaltic Concrete Pavement	1-6

### *Division 33 - Utilities*

33 01 30.13	Sewer and Manhole Testing	1-8
33 05 13	Manholes	1-13
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33 11 50	Existing Pipe Abandonment	1-4
33 13 00	Testing of Utility Piping	1-5

### *Division 40 - Process Integration*

40 05 13	Common Work Results for Process Piping	1-18
40 05 23	Common Work Results for Process Valves	1-7
40 05 23.15	Gate Valves	1-3
40 05 23.21	Plug Valves	1-4
40 05 23.24	Check Valves	1-4
40 05 23.72	Miscellaneous Valves*	1-6
40 91 00	Process Instrumentation and Control* (60)	1-4

40 91 07	Level Detection Devices	1-3
40 91 08	Submersible Level Sensor	1-3
40 91 09	Pressure Detection Devices	1-3
40 91 10	Combustible Gas Detector	1-7
40 91 11	Air Flow Switches	1-2
40 91 12	Intrusion Detection Switches	1-2
40 91 13	Alarm Indicators	1-2
40 91 14	Smoke Detectors	1-2
40 91 23	Flow Process Measurement Devices (60)	1-7
40 92 00	Control Panels and Components*	1-26
40 93 00	Control Strategy*	1-6
40 95 11	PLC Control System Hardware*	1-7

### *Division 43 - Process Gas & Liquid Handling*

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43 21 39	Submersible Liquid Pumps* (60)	1-14



Project Schedule: Pump Station Rehabilitation and Upgrades

ATTACHMENT C

