

# AGENDA

## Thursday, February 27, 2014 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2014-14

### **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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

### **III. PREVIOUSLY APPROVED LAND USE ISSUE** *(No public testimony on this item)*

1. Board Order No. \_\_\_\_\_ Adopting a Comprehensive Plan Amendment, Zone Map Amendment, and Site Plan Review request from Tonquin Holdings, LLC, on property described as T3S R1W Section 04A, Tax Lots 100 and 102. File Nos.: ZO287-13-CP; ZO288-13-ZAP; and ZO289-13-MAR – *Previously approved at the November 13, 2013 Land Use Hearing (Nathan Boderman, County Counsel)*

### **IV. BOARD DISCUSSION ITEM** *(The following items will be individually discussed by the Board only, followed by Board action.)*

1. Resolution No. \_\_\_\_\_ Regarding Sea Lions at Willamette Falls (Gary Schmit, Public and Government Affairs)

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

1. Adoption of an Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Milwaukie Regarding Access and Development Near Kellogg Creek Treatment Plant (Elizabeth Garcia, Water Environment Services)

*\*Report to come*

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

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

1. Approval of an Intergovernmental Agreement between Gladstone School District #115 for Child Resource Coordinator services – *Children, Youth & Families*
2. Board Order No. \_\_\_\_\_ Approval of Mental Health Director's Designee to Authorize a Custody Hold Under *ORS 426.233* – *Behavioral Health*
3. Approval of Intergovernmental Agreement #145025 with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division and Clackamas County Social Services Division to serve as the Regional Coordinator for the Four (4) County Metro Aging & Disabilities Resource Connection Consortium for the Money Management Program – *Social Services*
4. Approval of an Intergovernmental Agreement with the State of Oregon Department of Human Services for Job Opportunities and Basic Skills for clients receiving Temporary Assistance to Needy Families (TANF) - *Community Solutions*

**B. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of an Authorization to Purchase Mobile Data Computers from CDW-Government - *CCSO*

**C. Department of Employee Services**

1. Approval of the Administrative Services Agreement with Moda Health for Claims Administration of the Self-insured Dental Plan for the Period of January 1, 2014 through December 31, 2014

**D. Business & Community Services**

1. Resolution No. \_\_\_\_\_ Authorizing Clackamas County Parks to Apply for an Oregon Parks and Recreation Department Land and Water Conservation Fund Grant for Barton Park Fire Pond Rehabilitation and Delegates the Business and Community Services Director Authority to Sign the Grant Application.

**VII. DEVELOPMENT AGENCY**

1. Authorization to Approve Utility Easements

**VIII. COUNTY ADMINISTRATOR UPDATE**

**IX. COMMISSIONERS COMMUNICATION**

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



February 27, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

**Stephen L. Madkour**  
County Counsel

**Kimberley Ybarra**  
**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
Assistants

**A Board Order approving a comprehensive plan amendment,  
corresponding zoning map amendment, and site plan review**

On October 30, 2013, the Board conducted a land use hearing to consider an amendment to a comprehensive plan amendment, corresponding zoning map amendment, and site plan review application. The applicant is Tonquin Holdings, LLC. The Applicant requests permission to mine and process aggregate materials from an approximately 34-acre site located at the southwest corner of the intersection of Morgan Road and Tonquin Road. The total excavation area would be approximately 26 acres in size. The Applicant has estimated that there are approximately 9,500,000 tons of in-place rock reserves on the Property. Tonquin Holdings, LLC submitted the following applications to allow development of an aggregate mining and processing operation on the subject property:

1. A Post-Acknowledgment Plan Amendment of the Clackamas County Comprehensive Plan to designate the subject property, approximately 34 acres, as a Goal 5 significant mineral and aggregate resource site in Chapter III, Table III-02 of the Plan (Z0287-13-CP);
2. A zoning map amendment to apply a Mineral and Aggregate Overlay (MAO) designation to the subject property (Z0288-13-Z); and
3. A Mineral and Aggregate Overlay District Site Plan Review application for the proposed mining operations if item nos. 1 and 2 are approved (Z0-289-13-MAR).

The Planning Staff, in a staff report dated September 10, 2013 analyzed the proposal and recommended approval of the application to the County Planning Commission. The Planning Commission conducted a public hearing on this matter on September 16, 2013, and at its October 7, 2013 public hearing, adopted a series of motions relating to different aspects of the application based on the findings and conditions in the planning staff report along with testimony received during their hearings process.

A public hearing was held before the Board of County Commissioners on October 30, 2013 at which testimony and evidence were presented. On November 13, 2013, a unanimous decision was made by the Board to approve the applications, subject to staff's proposed conditions, as modified by the Applicant's additional proposed conditions in a letter dated November 4, 2013. The Board also decided to impose a new condition pertaining to the use of a street sweeper on Morgan Road and to adopt a new or amended condition addressing groundwater and storage of

interim potable water for one or more of the five properties identified in Condition 48. The Board directed staff to prepare the requested amendments to the conditions of approval and to draft a Board Order to finalize the decision.

Pursuant to the Board's direction, staff offers the following amendments to the list of conditions of approval:

**Condition 48:** "Subject to documented access permission from private property owners, the monitoring of existing offsite wells associated with the properties listed below is required. The following property owners and properties have been identified as having a potentially high risk of conflict with groundwater quantity:

- a. Fred Smith, 12551 SW Morgan Road, Sherwood;
- b. Lee and Andrea Patrick, 12535 SW Morgan Road, Sherwood;
- c. James B. and Marilyn Kramer, 12525 SW Morgan Road, Sherwood;
- d. James P. Kramer, 12885 SW Morgan Road, Sherwood; and
- e. Mark S. Platt, 12557 SW Morgan Road, Sherwood.

Subject to access authorization, monitoring protocols shall include the development of a baseline well status report for the five domestic wells within 90 days after commencement of site construction. If access is provided, the Site Operator will monitor water levels within 30 days of a request from a property owner to assess potential impacts.

In the event private well monitoring indicates a measured loss of 20 percent or greater daily in daily domestic water supply, the following shall occur:

- i. Supplemental mitigation shall be provided including but not limited to deepening or replacement of private wells to tap deeper aquifers that are isolated from shallower mining impacts;
- ii. Within 72 hours the applicant/operator shall provide not less than 400 gallons per 24 hour period of potable water for domestic use, by water tanker or other source to the above referenced affected owner. In the event that the provision of potable water becomes necessary, as requested by the affected property owner, a temporary above-ground potable water storage container shall be provided on the affected parcel. The container shall provide no less than 400 gallons of storage."

**Condition 49a:** "In the event the applicant/operator implements injection wells or infiltration trenches as a groundwater quantity mitigation measure, applicant/operator will implement the groundwater quality baseline testing and periodic monitoring program outlined in the Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92) to ensure that the injection/infiltration water complies with the Safe Drinking Water Act of 1974 and subsequent amendments."

**Condition 74a:** "Upon commencement of quarry operations, Morgan Road shall be cleaned with a street sweeper, not less than twice a month within the improved right-of-way between the site entrance and the Morgan Road/Tonquin Road intersection. Upon commencement of reclamation activities, street sweeping shall occur in this same area once a week."

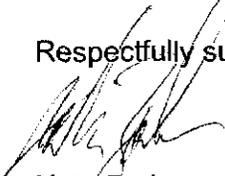
Because the conditions of approval in the original staff report were grouped by subject matter and impact for ease of review, the revised conditions have been numbered within the appropriate subject areas followed by the letter "a" so as not to require re-numbering all ensuing conditions. This includes the addition of the Applicant's additional proposed conditions which were submitted during the open record period and approved at the October 30, 2013 meeting. These amended conditions have been identified as Conditions 55a, 57a and 62a with an amendment to existing condition 48.

A copy of the Board Order along with findings and conclusions and conditions of approval is attached. Also attached you will find a map illustrating the property subject to the MAO overlay, as well as a copy of the proposed revision to the Mineral and Aggregate Resource Site Inventory.

**Recommendation:**

Staff recommends the Board approve the attached Board Order.

Respectfully submitted,



Nate Boderman  
Assistant County Counsel

For information on this issue or copies of attachments please contact Nate Boderman at (503) 742-8364

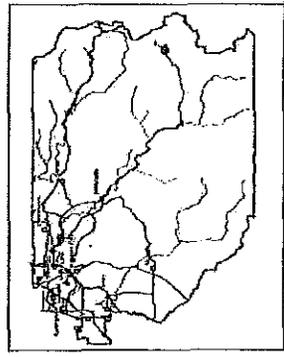
31 W 04 A

N.E. 1/4 SEC. 4 T. 3S. R. 1W. W.M.  
Clackamas County  
1" = 200'

*MAO Overlay*

Generalized Taxuses  
01  
201  
301  
401  
402  
500

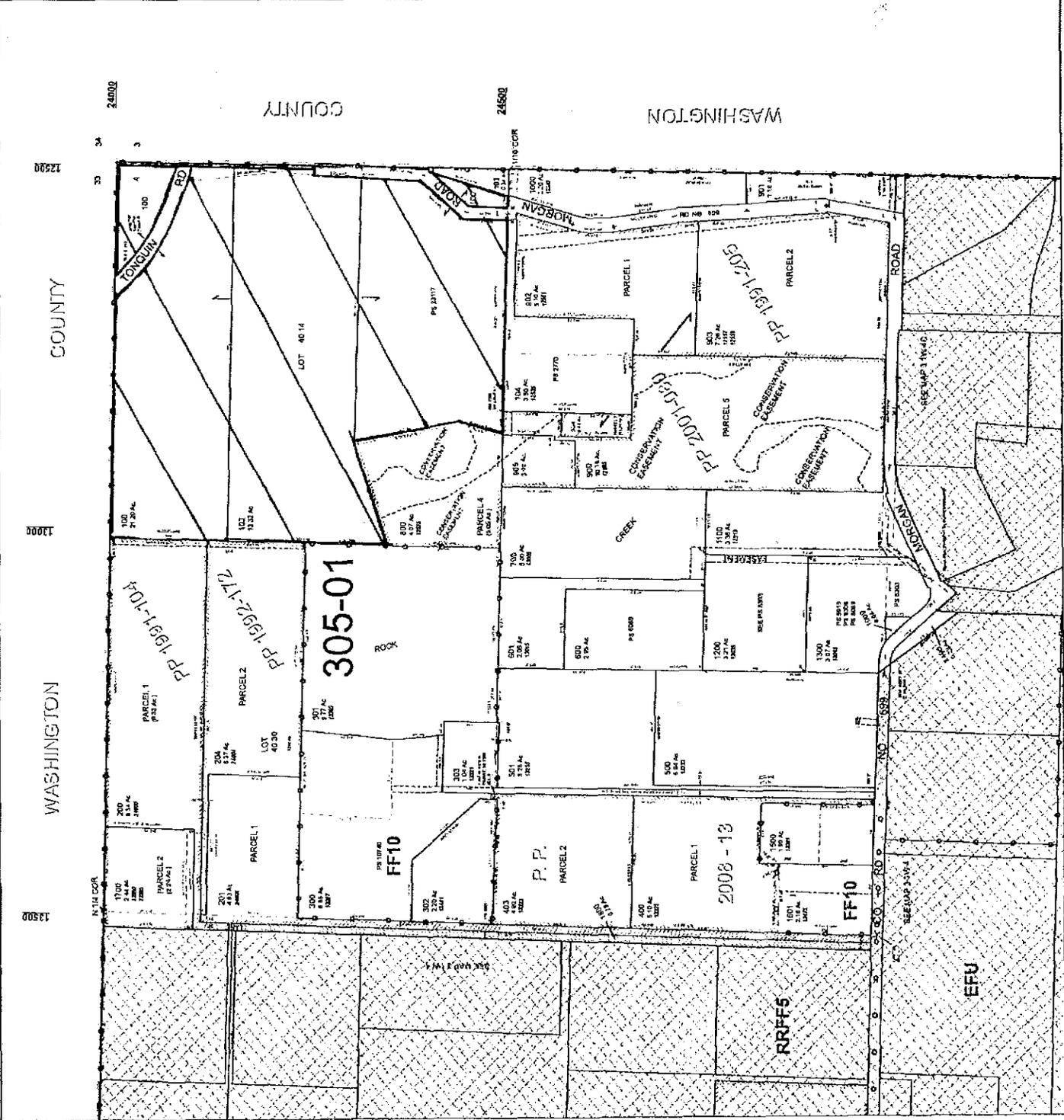
- Parcel Boundary
- Private Right ROW
- Historical Boundary
- Railroad Centerline
- TacCode Lines
- Map Index
- Water Lines
- Land Use Zoning
- Fields
- Water
- Corner
- Section Corner
- 1/16th Line
- Cent. Tap Line
- DLC Line
- Mainline Line
- PLBS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY



31 W 04 A



**Table III-2**  
**Inventory of Mineral and Aggregate Resource Sites \***

*Proposed Text Amendments (BOLD)*

<b>Significant Sites</b>
Anderson Quarry
Canby Sand & Gravel Site
Oregon Asphaltic Paving Company Site
River Island Sand & Gravel Site
Wilmes Sand & Gravel Site
Dhooghe Road Quarry Site
Estacada Rock Products Site
Minsinger Bench Site
Molalla River Reserve/Abbott, Merrill, Wallace Properties (T4S, R2E, Section 33, Tax Lots 700, 900 and 1100 and T4S, R2E, Section 34, Tax Lots 500 and 700)
Pacific Rock/Rodrigues Property (T4S, R1E, Section 8, Tax Lot 1000)
Pacific Rock Products, L.L.C. Property (T4S, R1E, Section 6, Tax Lots 100, 1800 and 1900 and T4S, R1E, Section 7, Tax Lots 190, 300, 390 and 400)
<b>Tonquin Holdings (T3S, R1W, Section 04A, Taxlots 100 &amp; 102)</b>

<b>Potential Sites</b>				
17	65	Francis Welch Silica	Ellis Deposit	Port Blakely Tree Farm
21-22	87	Terrill Silica Deposit	Scotts Mills Locality	Hein-Morris Property
29	89	Petes Mtn.	Dibble Deposit	Halton Company Property
32	90	Kroaker Prospect	Johnson & Laird	Alford-Goheen Property
35	114-116	Bauxite Deposit	Molalla High Alumina Clay	Robert Poole Property
37	227	Clear Creek	Avison Lumber	Western Pacific Construction
43	229	North Fork Claims	Forman Property	Wilsonville Concrete
45	231	Perry Bond Ranch	Molalla Redi-Mix	Molalla River Group
61-63		Molalla Clay	Patton Stone Quarry	Ogle Mountain Mine

Other Sites				
1-2	84	Crown Zellerbach	Florence Silvers	Meadowbrook
4-13	86	Cavenham Forest Ind	Barton Sand & Gravel	180 Pit
14-15	88	Jim Hartman	Columbia Continental	Marquam Limestone Quarry
26	92-100	Doug Sandy	Brightwood Quarry	Beaver Creek
30-31	102-113	Jim Elting	Norman Strabein	South Fork 9AC
33-34	117	Jack Parker	Oregon State Hwy Division 1	
38-42	119-161	Cassinelli	Quarry 3	
44	166-226	Clack Sand & Gravel	South Eagle Pit	
47	228	OR State Hwy Div 2	Arrah Wanna Co	
64	23	Quick Srvc Sand & Gravel	John Jorgeson	
66-82	232-460	George Herbst	Arthur Snyder	

\*Resource sites identified by number from the State of Oregon Department of Geology and Mineral Industries (DOGAMI) Special Paper 3 "Rock Material Resources of Clackamas, Columbia, Multnomah, and Washington Counties, Oregon;" by number or name from the DOGAMI "Mineral Information Layer For Oregon By County;" by name from Conditional Uses for Surface Mining; and by name from H.G. Schlicker & Associates, Inc. Report for the Anderson Quarry, Jerry Lewis & Associates Report for Canby Sandy & Gravel Site and Oregon Asphaltic Paving Company Site, Cascade Earth Sciences, LTD. Report for River Island Sand & Gravel Site, Dhooghe Road Quarry Site and Estacada Rock Products Site, and Reports Boatwright Engineering, Inc., Northwest Testing Laboratories, Inc. and Carlson Testing, Inc. for Wilmes Sand & Gravel Site

[Amended by Board Order 2001-283, 11/29/01; Amended by Board Order 2007-269, 4/26/07; Amended by Board Order 2012-12, 2/9/12]

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

In the Matter of a Comprehensive  
Plan Amendment, Zone Map Amendment,  
and Site Plan Review request from  
Tonquin Holdings, LLC, on property  
described as T3S R1W Section 04A,  
Tax Lots 100 and 102



ORDER NO.  
(Page 1 of 3)

File Nos.: ZO287-13-CP; ZO288-13-ZAP; and ZO289-13-MAR

This matter coming regularly before the Board of County Commissioners, and it appearing that Tonquin Holdings, LLC made application for a Comprehensive Plan Amendment, corresponding zoning map amendment, and site plan review to allow development of an aggregate mining and processing operation on undeveloped land in the RRFF-5 zoning district, on property described as T3S R1W Section 04A, Tax Lot(s) 100 and 102, located at the southwest corner of the intersection of Morgan Road and Tonquin Road.

It further appearing that the planning staff, by its report dated September 10, 2013, recommended approval of the application with conditions of approval; and

It further appearing that the Planning Commission at its October 7, 2013 public hearing, adopted a series of motions relating to different aspects of the application based on the findings and conditions in the planning staff report along with testimony received during their hearings process.

It further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on October 30, 2013, at which testimony and evidence were presented, and that a decision was made by the Board on November 13, 2013;

Based on the evidence and testimony presented this Board makes the following findings and conclusions:

1. The applicant requests approval of a Comprehensive Plan Amendment, corresponding zoning map amendment, and site plan review to allow development of an aggregate mining and processing operation on undeveloped land in the RRFF-5 zoning district.
2. This Board adopts as its findings and conclusions the *Findings of Fact and Conclusions of Law Approving the Land Use Applications for the Tonquin Aggregate Quarry* document attached hereto and incorporated herein as Exhibit B, which found the application to be in compliance with the applicable criteria.

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ORDER NO.  
(Page 2 of 3)

File Nos.: ZO287-13-CP; ZO288-13-ZAP; and ZO289-13-MAR

NOW THEREFORE, IT IS HEREBY ORDERED that the Planning Staff's recommendation to approve the requested Comprehensive Plan Amendment, Zone Map Amendment, and Site Plan Review request is hereby AFFIRMED, subject to the conditions of approval as contained in the staff report dated September 10, 2013, the conditions of approval submitted by the Applicant in a letter dated November 4, 2013 and identified as Exhibit 112 in the record, and the following amended conditions of approval:

**Condition 48:** "Subject to documented access permission from private property owners, the monitoring of existing offsite wells associated with the properties listed below is required. The following property owners and properties have been identified as having a potentially high risk of conflict with groundwater quantity:

- a. Fred Smith, 12551 SW Morgan Road, Sherwood;
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ORDER NO.  
(Page 3 of 3)

File Nos.: ZO287-13-CP; ZO288-13-ZAP; and ZO289-13-MAR

ii. Within 72 hours the applicant/operator shall provide not less than 400 gallons per 24 hour period of potable water for domestic use, by water tanker or other source to the above referenced affected owner. **In the event that the provision of potable water becomes necessary, as requested by the affected property owner, a temporary above-ground potable water storage container shall be provided on the affected parcel. The container shall provide no less than 400 gallons of storage.**

**Condition 49a:** "In the event the applicant/operator implements injection wells or infiltration trenches as a groundwater quantity mitigation measure, applicant/operator will implement the groundwater quality baseline testing and periodic monitoring program outlined in the Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92) to ensure that the injection/infiltration water complies with the Safe Drinking Water Act of 1974 and subsequent amendments."

**Condition 74a:** "Upon commencement of quarry operations, Morgan Road shall be cleaned with a street sweeper, not less than twice a month within the improved right-of-way between the site entrance and the Morgan Road/Tonquin Road intersection. Upon commencement of reclamation activities, street sweeping shall occur in this same area once a week."

A complete list of the applicable conditions of approval has been attached hereto and incorporated herein as Exhibit A. These conditions have been drafted and attached to this order to reflect the Board's decision, and to make final quality control edits for formatting and consistency purposes.

DATED this 27th Day of February, 2014

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

### **CONDITIONS OF APPROVAL:**

1. Comprehensive Plan Table III-2, "Inventory of Mineral and Aggregate Resource Sites", shall be amended to add the subject property as a "Significant Site".
2. The Board Order and all attachments allowing mining of the subject property together with limiting conditions and supporting background documents shall be adopted by reference in Comprehensive Plan, Appendix A, "Maps and Documents Adopted by Reference".
3. The official zoning map shall be amended by application of the Mineral and Aggregate Overlay Zoning District to the subject property; tax lots 100 & 102, Assessor's Map No. 31W04A.

### **General Operations Related:**

4. Mining (including but not limited to excavation and processing) is restricted to the hours of 7:00 AM to 6:00 PM Monday through Friday, and 8:00 AM to 5:00 PM Saturday. Drilling and blasting is restricted to the hours of 9:00 AM to 4:00 PM Monday through Friday.
5. No mining (including but not limited to excavation and processing), drilling, or blasting operations shall take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Further, no drilling or blasting operations shall take place on Saturdays.
6. The applicant and/or operator shall not initiate mining and activities on the Quarry until the Oregon Department of Geologic and Mineral Industries (DOGAMI) approves the reclamation plan and operating permit for the Quarry.
7. The applicant and/or operator shall obtain approval from the DOGAMI of a reclamation plan for the subject property and shall implement the same.
8. The applicant and/or operator shall obtain Oregon DEQ approval of a Spill Prevention Controls and Countermeasures Plan for the Quarry and shall comply with same.
9. Copies of all permits issued for the Quarry shall be provided to the County including, but not limited to, any permits issued by DOGAMI, DSL, DEQ, the Oregon Water Resources Department, the Oregon Fire Marshal's Office, local Fire Marshal's Office if applicable, and the U.S. Army Corps of Engineers.
10. The Quarry operator shall carry a comprehensive liability policy covering mining and incidental activities during the term of the operation and reclamation, with an occurrence limit of at least \$500,000. A certificate of insurance for a term of one (1) year shall be deposited with the

County prior to the commencement of mining, and a current certificate of insurance shall be kept on file with the County during the term of operation and reclamation.

11. Off-road equipment (i.e. excavators, front-end loaders, loading trucks, and bulldozers) used for internal quarry operations shall be fitted with broadband rather than traditional narrowband backup alarms.

12. Unless otherwise agreed to by Kinder Morgan, the quarry operator shall comply with the recommended guidelines dated October 7, 2010 (including attachment) provided by Kinder Morgan for blasting within 300 feet of their pipeline.

**General Mine Plan Related Conditions:**

13. The applicant and/or operator of the quarry shall maintain the following screening measures for the property: 1) a cyclone fence with wood slats and/or vegetation, installed around the property; 2) noise mitigation barriers in accordance with the Tonquin Quarry Noise Study dated September 23, 2013; and 3) natural and supplied screening as outlined by the Murase and Associates landscape plan dated April 2013, or as otherwise required herein.

14. Extraction, processing, and stockpiling activities shall be limited to those areas of the subject property labeled as appropriate for such activities and depicted on the site plan dated April 2013, or as otherwise required herein.

15. Slope inclinations shall not exceed an average slope of ½:1 (horizontal to vertical) within the rock mass during mining unless an alternative standard is permitted by the DOGAMI.

16. Identified setbacks from the property lines, utilities, and easements shall be maintained in accordance with the Mining Plan.

17. As depicted on the Mining Plan, no mining will occur within 50 feet of the Kinder Morgan pipeline crossing the subject property.

18. The PGE transmission line shall be relocated to the east boundary of the subject property, along the west side of SW Morgan Road, in accordance with PGE permission and standards.

19. Other than vegetation removal needed to address sight distance on Tonquin Road as described in the Kittelson & Associates report dated April 2013; no quarry related development shall occur on the north side of SW Tonquin Road.

20. The applicant and/or operator shall comply with the stormwater and erosion control plan in Appendix D of the application, or as it may be modified by the DOGAMI from time to time, when conducting mining activities on the subject property.

**Transportation Related Conditions:**

**Clackamas County:**

21. All proposed and required frontage improvements in, or adjacent to Clackamas County right-of-way, or on-site, shall be in compliance with the County Roadway Standards.
22. The applicant shall obtain a Development Permit from the Clackamas County Department of Transportation and Development, Engineering Division prior to the initiation of any construction activities associated with the project.
23. The applicant shall verify by survey that a 24-foot wide, one-half right-of-way width exists along the entire site frontage, on the westerly side of the Morgan Road right-of-way where the Morgan Road right-of-way is within Clackamas County, or shall dedicate additional right-of-way as necessary to provide the minimum width. Contact Deana Mulder for the specifics regarding exhibits to be included with submittals (Clackamas County Roadway Standards Table 2-4, ZDO subsections 1007.03 A and 1007.03 F).
24. The applicant shall grant an eight-foot wide public easement for signs, slopes, and public utilities purposes along the entire site frontage of tax lots 100 and 102 on the westerly side of Morgan Road where the Morgan Road right-of-way is within Clackamas County. Contact Deana Mulder for the specifics regarding exhibits to be included with submittals (Roadway Standards Drawing C110).
25. The applicant shall not transport more than one million tons of aggregate per year. Data shall be submitted to the Clackamas County Planning and Zoning staff on a yearly basis to verify compliance.
26. The applicant shall design and construct improvements to SW Morgan Road from the Morgan Road/Tonquin Road intersection to the site driveway approach. These improvements shall consist of:
  - a) Two-foot wide compacted gravel shoulders.
  - b) Drainage facilities in conformance with ZDO section 1008, Clackamas County Roadway Standards Chapter 4 and SWMACC rules and regulations.
  - c) One driveway approach designed and constructed in conformance with Roadway Standards Drawing D500. The minimum length of the paved surface from Morgan Rd. into the site shall be 50 feet, with the remainder being gravel-surfaced. The driveway shall be designed and constructed so that the skew angle of the driveway is no more than 10-degrees from the perpendicular unless a design modification for a greater skew angle is approved by County Engineering Division staff.

27. The applicant shall reconstruct the full width of SW Morgan Road between, and including, the site driveway approach and Tonquin Road.
- a) The reconstruction shall consist of rototilling the existing pavement and base followed by the addition of cement to create a cement-treated base (CTB), 22 feet in width.
  - b) The applicant shall submit lab test results, to County Engineering staff, on representative samples of the soil material to determine the appropriate cement content, maximum dry density, and optimum moisture content required for construction, for review and approval prior to the construction of the CTB.
  - c) A four inch thick asphaltic concrete section shall be placed on top of the CTB.
  - d) Compacted gravel shoulders, two feet in width, on both sides of the reconstructed portion of the road will also be required to support the edges of the road and protect the edges from damage.
  - e) The applicant shall permanently close and remove the existing driveway approaches from the site onto Morgan Road. The driveway approaches shall be replaced with matching shoulder, ditch and landscaping.
28. The applicant shall provide a copy of the Engineer's drainage study, surface water management plan, and Engineer's detention calculations to DTD Engineering, Deana Mulder.
29. The applicant shall provide adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the parking and maneuvering areas, including a minimum of 24 feet of back up maneuvering room for all 90-degree parking spaces. Loading spaces shall also be afforded adequate maneuvering room. The applicant shall show the paths traced by the extremities of anticipated large vehicles (dump trucks with pups, delivery trucks, fire apparatus, garbage and recycling trucks), including off-tracking, on the site plan to insure adequate turning radii are provided for the anticipated large vehicles maneuvering on the site and at the site driveway intersection with Morgan Road (ZDO subsection 1007.07 A 12).
30. Parking spaces shall meet minimum ZDO section 1007 dimensional requirements. The plans shall list the number of parking spaces required and the number of parking spaces provided. The applicant shall label all compact, carpool, disabled, and loading berth spaces on the plans.
31. Parking spaces for disabled persons and the adjacent accessible areas shall be paved.
32. The on site truck scale shall be provided with a minimum of 150 feet of storage length for vehicles approaching the scale.

33. The applicant shall install, operate, and maintain a wheel wash and/or other necessary infrastructure on site to prevent mud and other debris from being tracked onto or otherwise being deposited onto the road systems of Clackamas or Washington Counties.

34. The applicant shall prohibit quarry traffic from travelling SW Morgan Road south of the site driveway except for delivery of product to properties on Morgan Road south of the site driveway. Quarry traffic may also travel to and from the site driveway to the Town Quarry at 12542 Morgan Road to the south. The applicant shall submit a plan to the County Engineering Division indicating all the measures included to enforce this restriction for review and approval.

35. The applicant shall provide and maintain adequate intersection sight distance and adequate stopping sight distance at the site driveway intersection with Morgan Road. Adequate intersection sight distance for drivers turning left into the site shall also be provided and maintained. In addition, no plantings at maturity, retaining walls, embankments, fences or any other objects shall be allowed to obstruct vehicular sight distance. Minimum intersection sight distance, at the driveway intersection with Morgan Road, shall be 415 feet northerly and 645 feet southerly along Morgan Road, measured 14.5 feet back from the edge of the travel lane. Minimum stopping sight distance shall be in accordance with AASHTO standards, appropriately adjusted for grades and measured along the middle of the individual travel lanes. Minimum intersection sight distance for drivers turning left into the site shall be 415 feet measured from the driver's location at the intersection to the middle of the oncoming travel lane. (Roadway Standards section 240 and AASHTO Tables 9-6, 9-8, and 9-14).

36. The applicant shall provide a plan and profile exhibit, based on survey data, illustrating adequate intersection sight distances and adequate stopping sight distances for the driveway approach intersection with Morgan Road.

37. The applicant shall comply with County Roadway Standards clear zone requirements in accordance with Roadway Standards section 245.

38. The applicant shall provide an Engineer's cost estimate to Clackamas County Engineering, to be reviewed and approved, for the asphalt concrete, aggregates, curbs, sidewalks and any other required public improvements required herein.

39. The applicant shall install and maintain a 30-inch "STOP" sign, with the bottom of the sign positioned five feet above the pavement surface, at the driveway intersection with Morgan Road. (Manual on Uniform Traffic Control Devices).

40. All traffic control devices on private property, located where private driveways intersect County facilities shall be installed and maintained by the applicant, and shall meet standards set forth in the Manual on Uniform Traffic Control Devices and relevant Oregon supplements.

41. Prior to the issuance of a building permit for any proposed structures, the applicant shall submit to the following to the Clackamas County Engineering Division:

a. Written approval from the local Fire District for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.

b. Written approval from the appropriate surface water management authority (SWMACC) for surface water management facilities and erosion control measures.

c. A set of street and site improvement construction plans, including a striping and signing plan (including but not necessarily limited to defined lane lines, stop bars, pavement arrows, etc), for review, in conformance with Clackamas County Roadway Standards Section 140, to Deana Mulder in Clackamas County's Engineering Division and obtain written approval, in the form of a Development Permit.

i. The permit will be for road, driveway, drainage, parking and maneuvering area, and other site improvements.

ii. The minimum fee is required for eight or fewer, new or reconstructed parking spaces. For projects with more than eight parking spaces, the fee will be calculated at a per parking space rate according to the current fee structure for commercial/industrial/multi-family development at the time of the Development Permit application.

iii. The applicant shall have an Engineer, registered in the state of Oregon, design and stamp the construction plans for all required improvements.

42. Before the County issues a Development Permit, the applicant shall submit a construction vehicle management and staging plan for review and approval by the County DTD, Construction and Development Section. That plan shall show that construction vehicles and materials will not be staged or queued-up on public streets and shoulders without specific authority from the County DTD, Engineering Division.

**Washington County:**

43. Prior to the commencement of site clearing and mining operations, the applicant and/or operator shall comply with the requirements set forth in the letter dated August 30, 2013 from Naomi Vogel, Assoc. Planner, of the Washington County Dept. of Land Use and Transportation and attached as an Addendum to these conditions of approval.

44. Prior to the commencement of site clearing and mining operations, the applicant and/or operator shall provide written verification to the Clackamas County Planning and Zoning Division and Engineering Division that the Washington County requirements have been satisfied or guaranteed.

### **Groundwater Related Conditions:**

45. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Onsite observation wells currently focus on water-bearing zone #3. Prior to excavation to elevation -100 feet mean sea level (msl), three additional borings (core holes) shall be completed to directly identify and characterize water-bearing zone #4. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. All three installations shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.

46. Long-term groundwater level monitoring shall focus on water-bearing zones #3 and #4, and automated monitoring shall include existing and new observation wells. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 2 years, and shall continue per DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.

47. Packer tests and slug tests should be performed during drilling to estimate the water-bearing zone's hydraulic conductivity, which will facilitate mitigation and dewatering system design. The tests should focus at the design depths for the proposed infiltration benches and at water-bearing zones #3 and #4.

48. Subject to documented access permission from private property owners, the monitoring of existing offsite wells associated with the properties listed below is required. The following property owners and properties have been identified as having a potentially high risk of conflict with groundwater quantity:

- a. Fred Smith, 12551 SW Morgan Road, Sherwood;
- b. Lee and Andrea Patrick, 12535 SW Morgan Road, Sherwood;
- c. James B. and Marilyn Kramer, 12525 SW Morgan Road, Sherwood;
- d. James P. Kramer, 12885 SW Morgan Road, Sherwood; and
- e. Mark S. Platt, 12557 SW Morgan Road, Sherwood.

Subject to access authorization, monitoring protocols shall include the development of a baseline well status report for the five domestic wells within 90 days after commencement of Site construction. If access is provided, the Site Operator will monitor water levels within 30 days of a request from a property owner to assess potential impacts. In the event private well monitoring

indicates a measured loss of 20 percent or greater in daily domestic water supply, the following shall occur:

- a. Supplemental mitigation shall be provided including, but not limited to, deepening or replacement of private wells to tap deeper aquifers that are isolated from shallower mining impacts;
- b. Within 72 hours the applicant/operator shall provide not less than 400 gallons of potable water for domestic use per 24 hour period by water tanker or other source to the above referenced affected owner. In the event that the provision of potable water becomes necessary, as requested by the affected property owner(s), a temporary above-ground potable water storage container shall be provided on the affected parcel. The container shall provide no less than 400 gallons of storage.

49. Mitigation measures, including infiltration benches or injection wells along the south property boundary, shall be designed, built, and monitored to proactively avoid offsite impacts. Infiltration benches shall be constructed above water-bearing zone # 3 (about 75 feet msl) in rock suitable to facilitate infiltration. Water applied to the infiltration bench provides a positive hydrostatic head in the rock mass that reduces groundwater declines adjacent to the quarry. The additional test borings, instrumentation, and monitoring, as well as observed seepage into the active quarry shall be utilized for development of final design and evaluation of mitigation measures. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in well operation and storage capacity shall be considered as alternate mitigation options to alleviate water quality or quantity impacts.

49a. In the event the applicant/operator implements injection wells or infiltration trenches as a groundwater quantity mitigation measure, applicant/operator will implement the groundwater quality baseline testing and periodic monitoring program outlined in the Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92) to ensure that the injection/infiltration water complies with the Safe Drinking Water Act of 1974 and subsequent amendments.

50. The quarry's excavation depth shall be maintained above water bearing zone #4 identified in the Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92).

51. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Protection Agency and shown in Appendix M of the Application.

**Acoustic Related/Noise Control Conditions:**

52. The Quarry operator shall comply with the recommendations contained in the noise study prepared by Daly-Standlee and Associates, Inc. (DSA) dated September 23, 2013 and the supplemental letter dated September 5, 2013 by DSA.

53. Noise mitigation barriers shall be constructed in accordance with the DSA report along portions of the western and southern property lines.

54. The Quarry operator shall utilize polyurethane or rubber screens or proximate berms or buffers in accordance with the DSA report in order to mitigate the noise impacts associated with operation of crushing and screening equipment when it is located in Crusher Operating Area #1; this requirement ends when the crushing and screening equipment is relocated to Crusher Operating Area #2. Both Crusher Operating areas are depicted on Figure #3 of the DSA report.

55. The Quarry operator is not required to monitor or mitigate noise impacts to any off-site dwelling or property in the event the owner of the off-site dwelling or property grants the Quarry operator a written and recorded noise easement allowing *unmonitored and unmitigated* noise impacts from the Quarry on the property and/or at the dwelling.

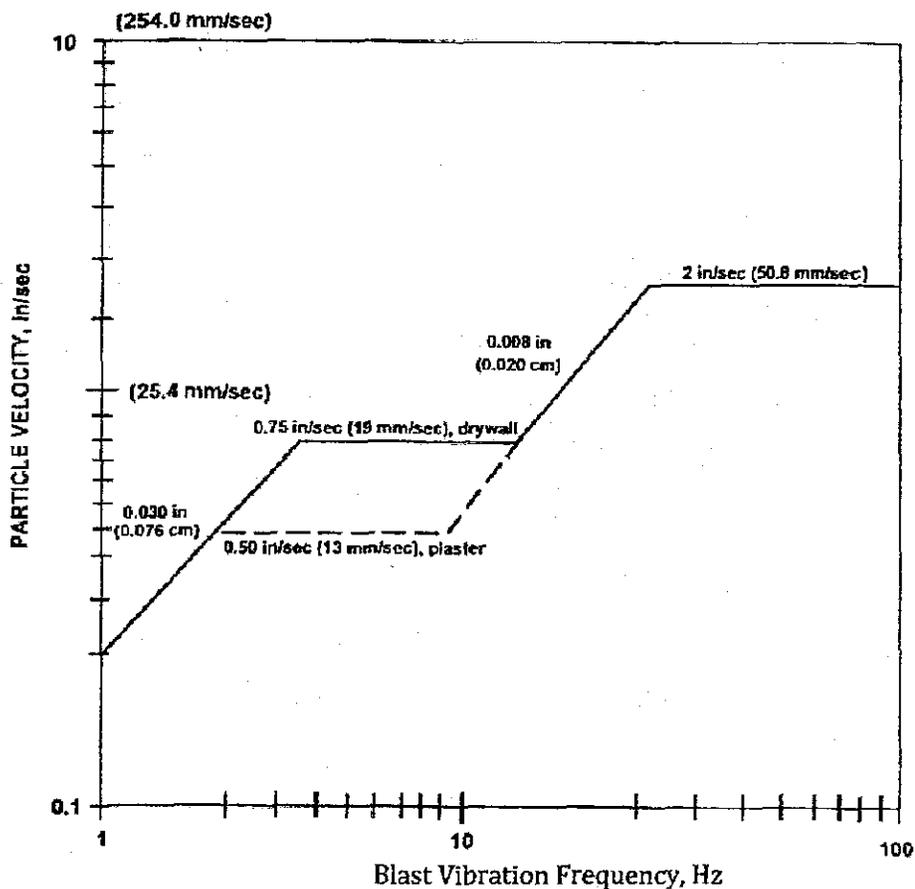
55a. Noise generated by blasting activities shall comply with the DEQ noise standard of 98dBC, slow response, at all noise sensitive receptors as identified in the Tonquin Quarry Goal 5 Noise Study dated September 18, 2013.

**Drilling and Blasting Related Conditions:**

56. The Quarry operator shall comply with the blasting plan prepared by Wallace Technical Blasting, Inc. dated April 12, 2013.

57. Notice of blasting events shall be posted at the Extraction Area in a manner calculated to be seen by landowners, tenants and the public at least 48 hours prior to the blasting event. In the case of ongoing blasting activities, notice shall be provided once each month for the period of blasting activities, and specify the days and hours when the blasting event is expected to occur.

57a. Blasting activities shall comply with the Z-curve vibration limits adopted by reference by the Oregon State Fire Marshal, as depicted in the following figure:



**Wetland / Resource Related Conditions:**

58. Mining and processing shall not occur within 100 feet of the mean high water line of Rock Creek and otherwise within the mapped riparian corridor as identified in the Clackamas County Comprehensive Plan River and Stream Corridor Area maps.

59. The applicant and/or operator shall not fill, excavate or otherwise disturb wetlands on the property until applicant first obtains appropriate permits from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps) and implements any required pre-disturbance mitigation measures. The applicant shall provide County Planning and/or WES/SWMACC with copies of any annual monitoring reports required by DSL and/or Corps.

60. Within 90 days after commencement of site construction, the quarry operator shall provide the Tualatin River National Wildlife Refuge and Clackamas County with calculations showing planned reductions in contributing upland watershed that will result in measurable

declines in surface water flowing towards the Refuge. In compliance with WES/SWMAAC standards, the proposed operation shall provide replenishment water for wetlands to maintain the average rainfall contribution during the rainy season (November-May). Subject to participation by the Refuge, Department of State Lands and other applicable agencies, wetland recharge rates to the Refuge may be enhanced (increased).

61. The Quarry operator shall monitor annual water levels within the undisturbed buffer areas to the offsite portions of Wetlands B and C, and take appropriate actions to maintain pre-disturbance wetness in those wetlands. The operator may install distribution systems (infiltration trenches, drip lines, etc.) for the replenishment water in the undisturbed buffer where such installation results in removal of no more than 15% of the native trees and shrubs located in such buffers as of June 1, 2013.

62. The operator shall not excavate within the boundaries, as determined by the DSL, of any on-site portion of Wetland B or C when there is surface water within the on-site portion of such wetland area.

62a. The operator shall install a clay barrier between the excavation area and buffer for the preserved portions of Wetlands B and C. Said clay barrier shall be compacted to prohibit water intrusion from Wetlands B and C into the excavation boundary.

63. The operator shall install and maintain an elevated area (above existing grade) of approximately 20 feet in width between the excavation boundary and the south edge of the proposed 50 foot buffer to the off-site portion of Wetland B (found in the northwest corner of the subject property). This elevated area is to be located outside of the excavation boundary, but can be occupied by an access road, stormwater facilities, or other activities ancillary to those occurring within the excavation boundary.

64. The operator shall maintain the approximate same condition of the undisturbed buffers as exist on the effective date of Clackamas County land use approval to facilitate wildlife movement and protect adjacent wetland functions. The undisturbed buffers are located immediately east and north of the Kramer parcel, adjacent to Rock Creek and the 50 foot buffer where Wetland B extends offsite to the north. Such maintenance shall include, but not limited to, control of increased Himalayan blackberry and reed canarygrass growth, replacement of dead trees (>12 in. DBH) when more than 10 percent have died, and related vegetative management.

65. Any artificial lighting for exterior illumination shall not directly cast light into the Tualatin River National Wildlife Refuge and undisturbed buffer areas where pre-disturbance vegetation has been preserved.

66. Where perimeter landscaping is required, the applicant shall install native trees and shrubs in accordance with County screening regulations for perimeter areas and PGE easement policies (where applicable).

67. Access roads adjacent to the northerly and westerly mining area boundaries shall include a gravel surface consisting of crushed rock with nominal sizing of at least one inch maximum dimension.

**Air Quality Related Conditions:**

68. The Quarry Operator shall comply with OAR 340-200 through 340-246 requirements.

69. The Quarry Operator shall comply with 40 CFR Part 60 Subpart OOOO requirements.

70. The main facility access road shall include a gravel surface consisting of crushed rock with nominal sizing of at least one inch maximum dimension within 300 feet of any public road.

71. The main facility access road shall be watered to prevent the generation of dust within 300 feet of any public road.

72. The operator shall maintain a truck wheel wash system for product trucks exiting the access road to the public road to reduce soil track-out onto the public road.

73. Onsite surfaces travelled by off-road or on-road mobile sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.

74. Water sprayers shall be used to control dust emissions from crushers and screens operating onsite.

74a. Upon commencement of quarry operations, Morgan Road shall be cleaned with a street sweeper, not less than twice a month within the improved right-of-way between the site entrance and the Morgan Road/Tonquin Road intersection. Upon commencement of reclamation activities, street sweeping shall occur in this same area once a week.

75. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement can be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.

76. Onsite idle times for heavy heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip.

Conditions Agreed to with the Metropolitan Service District (Metro) Related to proposed Tonquin Ice Age Trail – Per letter dated October 7, 2010 (Tab C, Application)

77. If Metro determines, by official enactment, that the east boundary of the subject property is an appropriate location for a portion of the Tonquin Trail, then the property owner will agree to the following implementation measures:

a. Dedication of a 20' trail easement within 50 feet of the Morgan Road right-of-way (south of Tonquin Road) and within 50 feet of site's east boundary (north of Tonquin Road) as shown on the attached exhibit, and subject to the following:

- 1) Agreement from Portland General Electric that the proposed easement can be placed within the 50' powerline easement for overhead utilities adjacent to the Morgan Road right-of-way.
- 2) If necessary, agreement from Clackamas County for placement of their requested 8' public utility easement within the proposed trail easement.

b. Placement of trail crossing signage (shown below) at the site egress to notify quarry traffic of bicycle and pedestrian activity. One sign will be provided for site egress. Replacement signs will be provided when necessary.



c. Additional signage requiring exiting vehicles to stop prior to crossing of the trail shall be provided.

d. Trail maintenance by the quarry operator will be limited to the area of the trail crossing and 10 feet north and south of that crossing. Trail maintenance to include the following:

- 1) The trail shall be swept weekly.
- 2) Other maintenance items include sign replacement, litter pickup and clearing of brush on an "as needed" basis.

e. An internal wheel wash shall be implemented for trucks leaving the site.

f. The property owner shall provide a sight obscuring fence along the west edge of the of the Portland General Electric easement adjacent to the Morgan Road right-of-way.

**Conditions Proposed by the Oregon Department of Geology and Mineral Industries (DOGAMI) for a Surface Mining Operating Permit for the Tonquin Quarry – February 14, 2011 (See Exh. 19):**

78. The following conditions of approval in this section were generated by DOGAMI staff for the proposed Tonquin Quarry. These proposed conditions accompanied a DOGAMI staff recommendation of approval. Although they will require minor amendments in order to reflect updated report dates, small adjustments to the mining plan, etc., these conditions very closely represent those that DOGAMI will impose upon the Tonquin Quarry (Note: verified by Planning staff in email message dated August 27, 2013 from Isaac Sanders of DOGAMI; See Exh. 19). Where these may conflict with other conditions, the more restrictive shall apply.
79. Clearly mark the DOGAMI permit boundary and required setbacks in the field, visible to all equipment operators.
80. Salvage, stockpile and retain all available soil and overburden material for final reclamation. Soil and overburden stockpiles and berms must be seeded in a cover crop to reduce erosion.
81. Implement the provisions in the Daly- Standlee & Associates noise abatement study.
82. Implement all aspects of the Westlake Consultants SWPCP to ensure all storm water is contained within the DOGAMI permit boundary. A DEQ NPDES 1200-A permit will be required before any storm water or pumped ground water is discharged to jurisdictional wetlands, Rock Creek or off site.
83. Submit a stamped slope stability study to DOGAMI for approval before creating any final excavated slope in excess of 40 feet in height. All fill slopes steeper than 2H:1V must be covered by a DOGAMI-approved engineered storm water drainage plain prior to final slope construction.
84. Maintain a minimum 50-foot property line setback for excavation and processing along Tonquin Road, SW Morgan Road and the southern boundary. A 25-foot setback will be allowed along the western and the northwestern boundaries. Sound and noise berms, stockpiling of aggregate materials, construction of internal access roads, construction of DOGAMI-approved recharge trenches, and construction of DOGAMI-approved storm water control measures are allowed within the setback areas.
85. Install a ground water monitoring well to a depth of -100 feet AMSL with minimum 10-foot screened intervals over the three water-bearing zones identified in the Hydrogeologic Evaluation Report dated June 7, 2010. Position the well in the setback on the west side of the infiltration trench shown in Plate 3.

86. Install a continuous water level recorder in the well and begin recording water level measurements one (1) week prior to dewatering activities. Also collect a baseline sample for water chemistry from the newly installed well, prior to dewatering activities, and analyze for turbidity, oil and grease, nitrogen as nitrate/nitrite, total iron, and coliform.
87. Submit a report to DOGAMI, within 30 days following installation of the well, documenting the well construction details, a location map, and the water chemistry analyses from the baseline sample. Submit the water level data on a semi-annual basis to DOGAMI in a hydrograph format.
88. Install additional wells, if determined necessary by DOGAMI, based on the findings of the water level monitoring data, and as pit dewatering is expanded.
89. Prior to conducting pit dewatering, submit cross sectional drawings showing the design (i.e. depth and construction) of the perimeter recharge structures depicted in Plate 3, as well as the recharge bench described in the supplemental notes for 5a,b of the July 2, 2010 reclamation plan.
90. Modify recharge trench dimensions (i.e. lengthen or deepen) if deemed necessary by DOGAMI.
91. Submit an annual report to DOGAMI that summarizes the blasting information for each year.
92. Reclaim all rock benches by replacing a minimum of 4 feet of growth medium, and revegetating with Douglas-fir trees planted on 10-foot centers.
93. Agree that if mining operations disturb any area outside of the permit area or area designated for active mining in the reclamation plan, including but not limited to disturbances caused by landslide, erosion or fly rock, the operator must restore the disturbed area to a condition that is comparable to what it was prior to the disturbance. Further, if areas outside of the permit boundary or outside of the area proposed for active mining in the reclamation plan are disturbed, DOGAMI may increase the amount of the required financial security to cover the cost of such restoration.

**Clackamas County WES/SWMAACC related conditions:**

94. The Water Environment Services (WES) department, a Department of Clackamas County, has reviewed the application for the above development. WES manages and operates the Surface Water Management Agency of Clackamas County (SWMAACC). SWMAACC provides surface water management and erosion control services in the Tualatin drainage basin for those areas within Clackamas County and not within City boundaries such as Lake Oswego or Tualatin. SWMAACC was formed by Clackamas County as a direct result of the 1986 lawsuit

filed by the Northwest Environmental Defense Center against the United States Environmental Protection Agency.

95. The proposed development is inside SWMACC boundaries and is subject to the Rules & Regulations and Standard Specifications. Therefore, the applicant/operator is required to submit plans for review and approval through Water Environment Services. The current Rules and Regulations for Surface Water Management apply. The current rates and charges for SWMACC apply.

96. The applicant submitted a preliminary report to SWMACC - "Offsite Storm water Analysis for the Poole Quarry" dated February, 2013 from Bernard Smith of Westlake Consultants, Inc. The preliminary report identified the separate responsibilities for permitting for surface water management. The surface mining operation will be permitted by the Oregon Department of Geology and Mineral Industries (DOGAMI). SWMACC shall review and permit surface water related items for those areas outside of the mining operations boundary (Extraction Area). SWMACC shall review and permit the storm water impacts that are outside the extraction area boundary, including the storm plan, report, erosion control and onsite wetland buffers.

97. The onsite quarry operations are administered by the DOGAMI. The mining operations shall have a clear excavation/extraction boundary established in the field.

98. DOGAMI will administer the mining operation permit and the methods that the mining operation uses to control impacts to surface water. The erosion and sediment control plan for the mining operations will be submitted, inspected and permitted by DOGAMI or the Oregon DEQ, whichever is appropriate. The applicant is required to coordinate with state and local agencies to determine if a National Pollutant Discharge Elimination System Stormwater Discharge Permit (NPDES) 1200-C or 1200-A is applicable.

99. The development is subject to the Surface Water Management Rules & Regulations of the SWMACC for storm drainage and erosion control to the extent discussed above.

100. The costs of the required and proposed surface water management facilities shall be borne entirely by the applicant. This development is subject to a storm water System Development Charge (SDC).

101. This development is subject to a minimum plan review fee for Surface Water plan review

102. This development is subject to a minimum plan review fees for erosion control plan review. Final plan review fees are based on the area to be disturbed. Plan review fees are due with the first submittal for plan review. A NPDES Permit for erosion control may be required if the disturbed area administered by SWMACC is greater than one acre.

103. Complete erosion control plans, shall be submitted to Water Environment Services and reviewed for conformance to the SWMACC stormwater regulations. Plans must be signed and sealed by an engineer registered in the State of Oregon and shall be submitted to the Technical Services Coordinator.
104. On-site detention facilities shall be designed to reduce the 2-year storm to ½ of the 2-year storm.
105. Water quality facilities must be designed to treat the remove 65 percent of the phosphorous from the runoff from 100 percent of the newly constructed surfaces.
106. Stormwater infiltration shall be provided. Infiltration systems must be sized to infiltrate the entire runoff volume from a one-half inch 24-hour rainfall event within a period of 96 hours.
107. An Upstream and Downstream Stormwater Drainage analysis is required. Drainage must be routed around the site to an acceptable outfall or through the on-site conveyance/detention system.
108. All springs, seeps, wetlands, sensitive areas, and required buffers shall be clearly shown and noted on the plans and identified by a certified professional. In addition, the location of any proposed buildings shall be shown on the plans so that potential storm water impacts can be effectively evaluated.
109. Any impacts to natural resource areas and required buffers shall be protected. SWMACC requires a minimum 50-foot wide buffer to retained wetlands and creeks. Any proposed work within jurisdictional waters also requires a permit from the Oregon DSL and COE and copies of the permit shall be submitted to the SWMACC prior to construction plan approval.
110. The applicant is required to protect the retained natural resource area and associated buffer. The means of protection can be a tract with development restrictions, a conservation easement, a restricted development area or some other means acceptable to the WES/SWMACC and the Clackamas County Planning and Zoning Division.
111. The approval of the land use application does not include any conclusions by the SWMACC regarding acceptability by the DSL or COE of the wetland delineation. This decision should not be construed to or represented to authorize any activity that will conflict with or violate the DSL or COE requirements. It is the applicant's responsibility to coordinate with the DSL or COE and (if necessary) other responsible agencies to ensure that the development activities are designed, constructed, operated and maintained in a manner that complies with the DSL or COE approval.
112. The developer is required to address long term maintenance of the surface management facilities. The owner shall submit a written storm water maintenance agreement to the SWMACC. The agreement shall indicate that the owner will have the on-site storm sewer

facilities inspected at least once per year (August or September), and clean or repair the facilities as needed. All sediment and debris removed shall be disposed of to an approved site.

Blackberry vines and dead vegetation shall be removed once annually during the months of August or September. This agreement shall be signed by the owner and notarized, and the original copy sent to Water Environment Services.

113. Prior to final civil plans approval, a final storm water civil plan and report shall be submitted and approved. The plans must be stamped by an Oregon State licensed civil engineer. The civil engineering plans shall be designed according to the Surface Water Management Agency of Clackamas County Rules and Regulations and Standard Specifications and as directed by the SWMACC during the plan review process. Any substantial deviation from the approved construction plans must have prior approval of the WES.

114. SWMACC shall review and approve the plans for the storm sewer systems for those areas outside of the mining operations boundary prior to commencement of site preparation and mining.

**Addendum-Washington County Dept. of Land Use and Transportation Recommended Conditions of Approval:**

(See following pages)



## WASHINGTON COUNTY, OREGON

Department of Land Use and Transportation - Operations & Maintenance Division  
1400 SW Walnut Street, MS 61, Hillsboro, Oregon 97123-5625  
503-846-7623 - FAX: 503-846-7620

August 30, 2013

Clackamas County Planning Division  
c/o Rick McIntire  
Clackamas County DTD  
150 Beaver Creek Road  
Oregon City, OR 97045

(Sent via electronic mail)

**Re: Proposed Comprehensive Plan Amendment/Zoning Map Amendment/Mineral & Aggregate Overlay District Site Plan Review  
Clackamas County Casefile No. Z0287-13-CP/Z0288-13-Z/Z0289-13-MAR**

Thank you for the opportunity to review and comment on the above noted application for a proposed quarry operation to be located at the southwest corner of SW Tonquin Road and SW Morgan Road in Clackamas County. Washington County Land Use and Transportation submits the following conditions of approval for access to SW Tonquin Road.

### RECOMMENDED CONDITIONS OF APPROVAL

Staff from both counties previously agreed that Washington County will be responsible for the review, permitting and inspection of required road improvements on SW Tonquin Road, and that Clackamas County will be responsible for the same on SW Morgan Road.

#### I. PRIOR TO ISSUANCE OF ANY SITE DEVELOPMENT OR BUILDING PERMITS BY CLACKAMAS COUNTY:

- A. Submit the following to Washington County Land Use and Transportation Public Assurance Staff (503-846-3843):
1. A copy of Clackamas County's final Notice of Decision, signed and dated.
  2. Completed "Design Option" form.
  3. \$5,000.00 Administration Deposit.

**NOTE:** *The Administration Deposit is a cost-recovery account used to pay for Washington County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit account is running low, additional funds will be requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. PLEASE NOTE: Any need of contact with Washington County staff can be a chargeable cost, if project plans are not*

complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of new utility inspection. Costs for enforcement actions will also be charged to the applicant.

4. Preliminary certification of adequate intersection sight distance prepared and stamped by a registered professional engineer, for the following locations:
  - a. Intersection of SW Morgan Road at SW Tonquin Road (based on acceptable industry standard for heavy trucks); and  
The preliminary certification shall include a detailed list of any improvements required within or outside of existing right-of-way that are necessary to provide adequate intersection sight distance.
5. Three (3) sets of complete engineering plans for the construction of the following public improvements:
  - a. Road widening, striping, shoulders, roadside drainage, and other required improvements (including necessary right of way and/or easements) to accommodate a westbound left-turn lane on SW Tonquin Road at SW Morgan Road, with a minimum storage length of 125 feet and appropriate tapers (refer to Traffic Staff Report dated August 14, 2013).  
**NOTE:** Plans must provide a sufficient level of plan and profile information to develop an accurate cost estimate for the left-turn lane improvement.
  - b. Any improvements necessary to provide adequate intersection sight distance pursuant to the preliminary sight distance certification noted in I.A.4.a. of this letter.
  - c. Adequate illumination at the intersection of SW Tonquin Road and SW Morgan Road.  
**NOTE:** Adequate illumination shall consist of at least one 200-watt high-pressure sodium vapor head luminaire mounted at a minimum mounting height of 20 feet, on existing utility poles if available. The fixture shall have a medium full-cutoff Type III distribution. The pole shall be within the area defined by the radius returns of the intersection. The fixture shall be oriented at 90 degrees to centerline of the arterial road. If no existing utility poles are available within the intersection area as defined by the radius returns, the developer shall meet the requirements of the Department of Land Use and Transportation Roadway Illumination Standards, latest revision. Illumination within the prescribed intersection area shall be a minimum of 1.5 times the required illumination level of the roadway classification at the access. The County Traffic Engineer may require illumination in addition to the above-stated minimums.
  - d. Defined lane lines, stop bars, and pavement arrows on SW Morgan Road at its intersection with SW Tonquin Road.
6. Cost estimate and proportionality analysis for future left-turn lane improvement on SW Tonquin Road, as described in I.A.5.a. above, for consideration by the County Engineer. Cost estimate shall include purchase of additional off-site right-of-way or easements required to facilitate construction of the left-turn lane.

- B. Obtain a Washington County Facility Permit upon completion of the following:

1. Obtain Washington County Engineering Division approval, subject to concurrence from Clackamas County, of the sight distance certification and plans in Conditions I.A.4. and 5. above, and provide a financial assurance for the construction of the improvements required pursuant to conditions I.A.5. b. thru d. above.

**NOTE:** *The Washington County Public Assurance staff will send the required forms and documents to the applicant's representative after submittal and approval of the public improvement engineering plans.*

2. Submit payment of a proportionate share for future construction of a dedicated left-turn lane as described in Condition I.A.5 a. above (including right-of-way or easement dedications) in an amount to be determined by the Washington County Engineer
3. Provide evidence that the documents required by condition I.C. have been recorded.

**C. The following documents shall be executed and recorded with the appropriate County or Counties:**

1. Dedication of additional right-of-way to provide a minimum of 45 feet from each side of centerline along the site's frontage of SW Tonquin Road, including adequate corner radius at SW Morgan Road.
2. Dedication of any on-site right-of-way or easements necessary to accommodate future construction of a left-turn lane as described in Condition I.A.5 a. above, including adequate pavement width for a minimum of 125 feet of storage, appropriate tapers, required shoulders, roadside drainage, adequate intersection sight distance, etc.
3. Dedication of on-site sight distance easements needed to provide adequate intersection sight distance, pursuant to condition I.A.4. above.
4. Dedication of any off-site sight distance easement(s) needed to provide adequate intersection sight distance, pursuant to condition I.A.4. above, if determined necessary by the County Engineer

**NOTE:** *Preparation of documents for recordation within Washington County shall be coordinated with Scott Young, Washington County Engineering/Survey Division (503-846-7933)*

**II. PRIOR TO COMMENCEMENT OF QUARRY OPERATIONS ON THE SITE:**

- A. All conditions indicated above shall have been met.
- B. All required public improvements pursuant to conditions I.A.5. b. thru d. shall be completed and accepted by Washington County.
- C. Submit and obtain Washington County approval of final certification of adequate intersection sight distance (as described in Condition I.A.4. above), prepared and

Clackamas County Casefile No. 20287-13-CP/20286-13-Z/20289-13-MAR, Tonquin Holdings, LLC

stamped by a registered professional engineer, upon completion of required improvements.

Thank you again for the opportunity to comment. Please send a copy of Clackamas County's notice of decision on the conditional use permit application when it becomes available. If you have any questions, please contact me at 503-846-7639.

  
Naomi Vogel  
Associate Planner

Attachment: Washington County Traffic Staff Report - August 14, 2013 (3 pages)

cc: Gary Stockwell, County Engineer (via e-mail)  
Jude Zhu, Traffic Analyst, Engineering Division (via e-mail)  
Dave Sullivan, Operations & Maintenance Manager (via e-mail)  
Todd Watkins, Operations Senior Engineer (via e-mail)  
Matt Wallner, Tonquin Holdings, LLC (via e-mail)



**WASHINGTON COUNTY**  
**OREGON**

DATE: August 14, 2013  
TO: Naomi Vogel, Associate Planner  
FROM: Jiale Zou, P.E., Traffic Engineer *JZ*  
C: Gary Stockhoff, Traffic Analysis File #1482, C-1116  
RE: **TRAFFIC STAFF REPORT**  
**TONQUIN QUARRY**  
**CLACKAMAS COUNTY**

This report examines the traffic safety impacts of the proposed Tonquin Quarry development in the southwest quadrant of the intersection of SW Tonquin Road and SW Morgan Road in Clackamas County. This development is expected to be fully completed in 2015. Even though this proposed development is located in Clackamas County, the impacts on the Washington County roadways are assessed and improvements are recommended on the basis of the Washington County R&C 86-95 to ensure an adequate level of traffic safety.

Access to the site is proposed on SW Morgan Road located approximately 415 feet south of SW Tonquin Road. SW Tonquin Road east of SW Morgan Road is a Washington County roadway and classified as an arterial by the county. SW Morgan Road near the intersection is within Washington County. Therefore, this traffic report only assesses the traffic safety impacts at the intersection.

An Access Report was submitted by the applicant's traffic engineer ("Transportation Impact Analysis, Tonquin Quarry, Clackamas County, Oregon", Kittelson & Associates Inc., April 2013). The findings and recommendations given below are based, in part, on the information provided in the access report.

**FINDINGS:**

1. The site trip generation from the proposed development, based on the trip generation data from other similar sites, is as follows:

	Site Trip Generation		
	ADT (vpd)	AM Peak Hour (vph)	PM Peak Hour (vph)
Enter	225	25	11
Exit	225	20	23
Total	450	45	30

**Washington County - Department of Land Use & Transportation**  
Engineering, 200 S. 4th Street, MS 17 • Clackamas, OR 97015-3725, MS 17 • Traffic Engineering, 1501 S. 4th Street, MS 17  
1501 SW Walden Street, Hillsboro, OR 97123-5622  
Fax: (503) 846-3111

**TRAFFIC STAFF REPORT  
TONQUIN QUARRY  
CLACKAMAS COUNTY**

August 14, 2013

Page 2

Of the 450 daily trips, 390 trips are trucks (35 trucks during the AM peak hour and 15 trucks during the PM peak hour)

2. The site impact on streets under Washington County jurisdiction, based on a 10 percent increase in average daily traffic on the minimum impact area, is described below

Site Impact Area		
Link	From	To
SW Tonquin Road	SW Morgan Road	SW Morgan Road

5. Intersections within the impact area under Washington County jurisdiction were analyzed for the weekday AM and PM peak hours with the following results.

Intersection Analysis				
Intersection	LOS	Left Turn Lane Req.	Signal Warrant	SPIS
SW Tonquin Road/Morgan Road	C*	Yes	No	No

\* Level of service for STOP-controlled movement(s).

As indicated in the above table, the STOP-controlled movements at the intersection were estimated to operate at level of service C or better during the weekday peak hours.

Currently, a westbound left turn lane on SW Tonquin Road at the intersection is not warranted during the weekday AM peak hour, but is warranted during the PM peak hour based on the traffic volumes. With the proposed development this westbound left turn lane will also be warranted during the AM peak hour. With the proposed development this left turn lane requires 125 feet of storage.

As indicated in the applicant engineer's report the existing sight distance from the Morgan Road northbound approach along SW Tonquin Road to both the east and west does not meet the industry standards for heavy trucks.

**RECOMMENDATIONS:**

1. Construct a westbound left turn lane with minimum storage of 125 feet on SW Tonquin Road at the intersection with SW Morgan Road.

Exhibit B to Board Order

*Findings of Fact and Conclusions of Law Approving the Land Use Applications for the  
Tonquin Aggregate Quarry*

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW APPROVING THE LAND USE  
APPLICATIONS FOR THE TONQUIN AGGREGATE QUARRY**

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**In the matter of Applications for: (1) a Post-Acknowledgment Plan Amendment to the Clackamas County Comprehensive Plan to Designate a Goal 5 Significant Mineral and Aggregate Resource Site in Chapter III, Table III-02 of the Plan; (2) a Zoning Map Amendment to Apply the Mineral and Aggregate Overlay (MAO) Designation; and (3) Site Plan Review Application for Proposed Aggregate Mining and Processing Operations, on Property Zoned RRFF-5, Located at the Southwest Corner of Tonquin Road and Morgan Road.**

**COUNTY FILE NOS.  
Z0287-13-CP  
Z0288-13-ZAP  
Z0289-13-MAR**

**PREAMBLE**

In this matter, the Clackamas County Board of Commissioners ("Board") considered applications from Tonquin Holdings, LLC ("Applicant") for a post-acknowledgment comprehensive plan amendment ("PAPA Application"), corresponding zoning map amendment ("Zone Change Application"), and site plan review ("Site Plan Review Application") to allow development of an aggregate mining and processing operation on undeveloped land in the RRFF-5 zoning district. The three applications shall be collectively referred to herein as the "Applications."

For the reasons explained below, and based upon the identified evidence and argument in the record, the Board finds that the Applications satisfy all applicable approval criteria. The Board has considered the opponents' issues and contentions to the contrary and does not find these to be persuasive for the reasons discussed herein. Accordingly, the Board approves the Applications, subject to the conditions identified below.

**Summary of Project**

The Applications request permission to mine and process aggregate materials from an approximately 34-acre site located at the southwest corner of the intersection of Morgan

Road and Tonquin Road ("Property"). The total excavation area is approximately 26 acres in size and will be set back between 25-100 feet from the Property lines. The mining area will be surrounded by a fence for safety, and where possible, natural vegetation will remain along the Property lines to provide a visual buffer. Noise mitigation barriers will be located within the setbacks.

Applicant has estimated that there are approximately 9,500,000 tons of in-place rock reserves on the Property. Excavation will occur in four phases over 15-20 years, progressing from the north to the south and southwest until a quarry floor of approximately minus (-) 100 feet MSL is achieved. Once excavated, the material will be processed on-site through a crusher and then hauled off-site. The Property will be reclaimed by backfilling with clean fill dirt for redevelopment, as allowed in the underlying RRF-5 zoning district. In addition to the quarry, the proposed operation includes a temporary office, parking, and scale area.

The Property is currently undeveloped, with the exception of a Portland General Electric transmission line that traverses the Property in a north-south direction. Tri-County Investments, LLC is the owner of the Property.

### **Notice**

On August 12, 2013, the County transmitted notice of the Applications to the Department of Land Conservation and Development ("DLCD") in accordance with ORS 197.610. A copy of that notice is set forth in the record.

On July 25, 2013, the County mailed notice of the public hearings on the Applications to owners of property located within 2,000 feet of the Property, Community Planning Organizations, agencies, and other interested persons. A copy of that notice is set forth in the record. A revised notice of the public hearings on the Application was mailed to persons described in this section on October 10, 2013. A copy of that notice is set forth in the record.

### **Planning Commission Proceedings**

The Planning Commission held a public hearing on the Applications on September 16, 2013. At the hearing, the Planning Commission accepted oral and written testimony from staff, the Applicant, public agencies, proponents of the Applications, opponents of the Applications, and others. At the conclusion of the testimony, Commissioner Wagner moved, and Commissioner Andreen seconded, a motion to keep the record open until September 24, 2013, at 12 noon, and to continue the rebuttal and staff report to September 30, 2013. The Planning Commission passed the motion 6-0.

The Planning Commission reconvened on September 30, 2013. At this meeting, the Planning Commission accepted rebuttal testimony from the Applicant and then closed the hearing. After closing the hearing, the Planning Commission proceeded into deliberations.

The Planning Commission reconvened on October 7, 2013. At this meeting, the Planning Commission continued its deliberations. After concluding its deliberations, the Planning Commission adopted a series of motions relating to different aspects of the Applications. These motions are detailed in the Staff Report to the Board presented at the October 30, 2013 Board meeting.

The Planning Commission was not required to and did not make an overall decision or recommendation to the Board on the Applications; however, the Planning Commission did recommend consideration of several issues also detailed in the Staff Report to the Board. There were no procedural objections that arose from the Planning Commission proceedings.

### **Board Proceedings**

The Board conducted a *de novo* review of the Applications.

On October 30, 2013, the Board held a public hearing on the Applications. Chair John Ludlow and Commissioners Paul Savas, Martha Schrader, and Tootie Smith were present. Commissioner Jim Bernard was absent. At the commencement of the hearing, Assistant County Counsel Nate Boderman read the quasi-judicial announcements required by ORS 197.763 into the record. Mr. Boderman asked the Board if any members had any *ex parte* contacts, bias, or conflicts of interest to report. No Board members made any disclosures. No one from the public challenged the ability of any member of the Board to participate in the matter.

At the hearing, Rick McIntire presented the Staff Report. Then, the Applicant presented its case, which included oral testimony by Matt Wellner, regarding the general aspects of the project; Steven Pfeiffer, regarding the scope of the hearing, applicable criteria, and related legal issues; Jerry Wallace, regarding the impacts from and oversight of blasting at the quarry; Gary Peterson, regarding potential impacts to wells in the vicinity of the quarry; and Phil Scoles, regarding measures that will prevent or mitigate impacts from the quarry to wetlands and wildlife. Following the Applicant's presentation, the Board accepted public testimony. No persons other than the applicant and applicant's consultant team spoke in favor of the Applications. The following persons spoke in opposition to the Application: Sparkle Anderson, on behalf of the Far West CPO; Erin Holmes, on behalf of the U.S. Department of Fish and Wildlife; Mary Byrnes; Vicki Norris; Hilde Coeckx; Jos Jacobs; David Crawford; Erin Madden, on behalf of Friends of Rock Creek; Tristan Hartfield; Gary Dimbat; John Jenkins; Narendra Varma; Phillip Ballarche; Rex Scott; Sharon Scott; Lee Patrick; Andrea Patrick; Marilyn Kramer; and Jim Kramer. The Applicant declined to provide oral rebuttal but requested the opportunity to provide written rebuttal on a condensed schedule.

The Board then closed the public hearing and held the record open as follows:

- Until November 4, 2013, at 5pm to allow any party to submit argument or evidence on any issue;
- Until November 8, 2013, at 5pm to allow any party to submit rebuttal argument or evidence; and
- Until November 12, 2013, at 12 noon to allow the Applicant to submit final written argument.

Various parties submitted written argument and evidence into the record in accordance with this schedule. These materials are all included in the record in this matter.

The Board reconvened on November 13, 2013. All Board members were present. At the commencement of the meeting, the Board members disclosed the following ex parte contacts: Chair Ludlow and Commissioners Savas and Smith disclosed site visits. Commissioner Savas disclosed that he bumped into Mr. Wellner at an unrelated meeting and they had a brief conversation at that time, but it would not affect his ability to remain impartial on the Applications. Commissioner Bernard disclosed that he had received inquiries from neighbors on the Applications but the conversations were general in nature and would not affect his ability to remain impartial on the Applications. Commissioner Bernard also stated that he reviewed the record and Board proceedings from October 30, 2013, so he would be able to participate in this matter. No one challenged the ability of any Board member to participate in this matter.

The Board then proceeded to deliberate on the matter. At the conclusion of deliberations, Commissioner Smith moved to approve the Applications, subject to staff's proposed conditions, as modified by the Applicant in its November 4, 2013, open record submittal. Commissioner Bernard seconded the motion. After further deliberations, the Board also passed motions amending the main motion to request a new condition pertaining to use of a street sweeper on Morgan Road with some regularity and to request a new or amended condition addressing storage of interim potable water for one or more of the five properties identified in Condition 48.

The Board adopted the motion, as amended, 5-0. Chair Ludlow directed staff to return with an implementing ordinance at a later meeting.

### **Applicable Criteria**

The County's July 25, 2013 public notice identified the following criteria as applicable to the Applications:

"Sections 309, 708, 1202 and 1302 of the Zoning and Development Ordinance (ZDO). The Post-Acknowledgment Comprehensive Plan amendment (PAPA) is subject to the Statewide Planning Goals, Oregon Administrative Rule Chapter 660, Division 23 and may be subject to one or more of the following applicable policies in the Clackamas County Comprehensive Plan including; Chapter 2, Citizen Involvement; Chapter 3, Water resources, Mineral and Aggregate Resources, and Noise and Air

Quality; Chapter 4, Land Use Plan Designations; Chapter 5, Transportation; Chapter 7, Public Facilities and Services; Chapter 8, Economics; and Chapter 11, The Planning Process.”

For the reasons explained below, the Board finds that the County is preempted from applying local criteria to the PAPA Application and Zone Change Application. Instead, the provisions of OAR Chapter 660, Division 23 are applicable to these two applications.

### **Record Before the Board**

The record before the Board consists of the following:

- Oral testimony presented by the Applicant and other parties at the public hearings in this matter on September 16, 2013; September 30, 2013; and October 30, 2013, as reflected in the official recordings of these hearings.
- Written testimony (and an aggregate rock sample) set forth in Exhibits 1-144.

### **GENERAL FINDINGS AND CONCLUSIONS RELATED TO THE APPLICATIONS (Z0287-13-CP/Z0288-13-ZAP/Z0289-13-MAR)**

1. The Board finds that, as described above, the County has followed the correct procedures in this matter by providing requisite notice to area landowners, DLCD, and other affected government agencies and by conducting multiple public hearings for the Applications in accordance with the quasi-judicial procedures required by state and local law. Further, the Board finds that no one has raised any objection to the County's procedures in this matter or to the impartiality of any member of the Planning Commission or the Board.

2. As findings supporting approval of the Applications, the Board hereby accepts, adopts, and incorporates within this Decision by reference, in their entirety, the following materials: the Applicant's narrative for the PAPA Application and the Zone Change Application dated June 5, 2013; the Applicant's narrative for the Site Plan Review Application dated June 5, 2013; and the Staff Report to the Planning Commission dated September 10, 2013 ("Staff Report"). The above-referenced documents shall be referred to in these findings as the "Incorporated Findings." The findings below (the "Supplemental Findings") supplement and elaborate on the findings contained in the materials noted above, all of which are incorporated herein by reference.

3. The Board finds that the Applicant's two application narratives, the Applicant's testimony received at the public hearings, the Staff Report, and the Applicant's November 4, 2013, letter, and the additional sources cited in these findings explain the need for imposing Conditions of Approval #1-114. The Board finds, based upon this substantial evidence, that each of these conditions is a reasonable condition that is feasible for the Applicant to comply with and is necessary to satisfy the applicable criteria presented in the Staff Report and the Supplemental Findings presented below.

4. The Board finds that the record contains all evidence and argument needed to evaluate the Applications for compliance with the relevant criteria.
5. The Board finds that it has considered these relevant criteria and other issues raised through public testimony.
6. The Incorporated Findings list all of the applicable approval criteria, and demonstrate compliance with these approval criteria. These supplemental findings elaborate upon and clarify the Incorporated Findings, and primarily address issues raised in opposition to the Applications. These Supplemental Findings are grouped into issues, with findings included in response to each issue. The issues are organized in traditional outline format and are assigned chronological numbers and alphabetical letters as appropriate. In the event of a conflict between the Incorporated Findings and the Supplemental Findings, the Supplemental Findings shall control.

## **SUPPLEMENTAL FINDINGS FOR THE PAPA AND ZONE CHANGE APPLICATIONS**

### **I. STATEWIDE PLANNING GOALS ("GOALS")**

The Board finds that the Oregon Statewide Planning Goals apply to the PAPA Application and the Zone Change Application because they request post-acknowledgment plan amendments. ORS 197.175(2)(a); *Beaver State Sand and Gravel, Inc. v. Douglas County*, 43 Or LUBA 140 (2002) (post-acknowledgment plan amendment to add a new site to County's Goal 5 inventory must comply with applicable Goals). For the reasons explained below, the Board finds that the PAPA Application and the Zone Change Application are consistent with the Goals.

#### **Goal 1: Citizen Involvement.**

**To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in all phases of the planning process. The County has adopted such a program for PAPA's, and it is incorporated within the CCCP and CCZDO and has been acknowledged by LCDC. Among other things, the County's program requires notice to citizens, agencies, neighbors, and other interested parties followed by multiple public hearings before the County makes a decision on the Applications. The Board finds that the County has complied with its adopted notice and hearing procedures applicable to PAPA's, including the notice requirements of CCZDO 1302. Further, no one objected to the procedures followed by the County in this matter. Therefore, the Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 1. See *Wade v. Lane County*, 20 Or LUBA 369, 376 (1990) (Goal 1 is satisfied as long as the local government follows its acknowledged citizen involvement program).

## **Goal 2: Land Use Planning.**

**To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

The Board finds that the provisions of OAR chapter 660, division 23 establish the land use planning process and policy framework for considering the PAPA Application and the Zone Change Application. Further, the evidence in the record, which includes detailed expert reports across a number of disciplines, demonstrates that the PAPA Application and the Zone Change Application satisfy all applicable substantive standards of OAR chapter 660, division 23. As such, there is an adequate factual base for the County's decision. Therefore, the Board finds that the County has met the evidentiary requirements of Goal 2.

The Board further finds that Goal 2 requires that the County coordinate its review and decision on the Applications with appropriate government agencies. The County provided notice and an opportunity to comment on the Applications to affected government agencies, including nearby cities and the State Department of Land Conservation and Development. The Board addresses the comments from these agencies in the findings below. Therefore, the Board finds that the County has met the coordination requirements of Goal 2.

The County finds that the PAPA Application and the Zone Change Application are consistent with Goal 2.

## **Goal 3: Agricultural Lands.**

**To preserve and maintain agricultural lands.**

Goal 3 is not applicable to a zone change from one non-resource designation to another. *Caldwell v. Klamath County*, 45 Or LUBA 548 (2003). The Property is located in the RRFF-5 zoning district, and the Board finds that the County does not apply this district to resource lands. See generally CCCP at IV-55 through IV-59. No one contended on the record that Goal 3 was an applicable approval criterion. Therefore, the Board finds that Goal 3 is not applicable to the Applications.

## **Goal 4: Forest Lands.**

**To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.**

The Property is not located on designated forest resource land. No one contended on the record that Goal 4 was an applicable approval criterion. Therefore, the Board finds that Goal 4 is not applicable to the Applications.

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.**

**To protect natural resources and conserve scenic and historic areas and open spaces.**

Goal 5 identifies mineral and aggregate resources as a significant resource. As applied to mineral and aggregate sites, Goal 5 is implemented by OAR 660-023-0180. For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(D), which reasons are incorporated herein by reference, the Board finds that there is substantial evidence in the whole record to support the conclusion that the PAPA Application and the Zone Change Application satisfy the requirements of OAR 660-023-0180, including how the location, quantity, and quality of the mineral and aggregate resource on the Property is significant; the identification of conflicts between the Project and allowed uses, including all other inventoried Goal 5 resources; identification of reasonable and practicable measures to minimize these conflicts; and the analysis of the economic, social, environmental, and energy consequences of allowing, not allowing, or limiting the Project based upon the only conflict that cannot be minimized.

For these reasons and the additional reasons set forth at pages 9-10 of the Staff Report, the Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 5.

**Goal 6: Air, Water and Land Resources Quality.**

**To maintain and improve the quality of the air, water and land resources of the state.**

The Board finds for the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Applicant has minimized the conflicts between the Project and allowed uses, including conflicts relating to discharges to air, water, and land. Further, the Board finds that the County has implemented Goal 6, in part, by adopting provisions of CCZDO 708 that apply directly to the Site Plan Review Application and are designed to maintain and improve the quality of the air, water, and land resources. For the reasons explained in these Supplemental Findings in response to CCZDO 708.05.C. and H. below, which reasons are incorporated herein by reference, the Board finds that the Site Plan Review Application satisfies these provisions, subject to conditions. Further, the Board finds that no one contended on the record that the Project was inconsistent with Goal 6. Accordingly, the Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 6.

## **Goal 7: Areas Subject to Natural Hazards.**

### **To protect people and property from natural hazards.**

The Board finds that there are no identified or inventoried natural hazards in the general area of the Property, and the Project is not located within the designated floodplain. Further, the Board finds that the Project includes measures designed to reduce risk to people and property from natural hazards, including a surface water management plan to reduce or avoid potentially adverse flooding impacts to off-site properties due to stormwater runoff. No one contended on the record that the Project did not satisfy Goal 7. The Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 7.

## **Goal 8: Recreational Needs.**

### **To satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.**

The Board finds, for two different reasons, that the Project will not interfere with any existing recreational facilities. First, the Project does not involve any designated recreational or open space lands or affect access to any significant recreational uses in the area. Second, although the Property is adjacent to the Tualatin River National Wildlife Refuge ("Refuge"), for the reasons explained below, and based upon the evidence in the record, the Board finds that the Project will not conflict with the Refuge and its recreational goals. In fact, the Project includes several conditions, such as setbacks, noise barriers, limited hours of operation, and fencing that the Board finds will minimize any impacts of the Project to the Refuge, including its related recreational aspects. Finally, as required by Condition 77a, Applicant will facilitate the siting of additional recreational facilities by dedicating a 20-foot wide trail easement along the eastern portion of the Property (in the event Metro determines by official enactment that it is an appropriate location for the Tonquin Ice Age Trail). The Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 8.

## **Goal 9: Economic Development.**

### **To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.**

In general, Goal 9 is only applicable to areas within urban growth boundaries. The Property is located outside the Metropolitan Portland Urban Growth Boundary. OAR 660-009-0010(1). Therefore, the Board finds that Goal 9 is not applicable to the Project. Alternatively, to the extent Goal 9 is applicable, the Board finds that the Project furthers the objectives of this goal by providing a material (rock) that is essential to the

construction of a variety of infrastructure projects. Development of these infrastructure projects will support a variety of economic activities across the state. The Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 9, to the extent it is applicable at all.

### **Goal 10: Housing**

**To provide for the housing needs of citizens of the state.**

The Board finds that Goal 10 is not applicable to the Project because the Property is not located within the Metropolitan Portland UGB and because it does not concern lands proposed for urban reserve designation or planned for urban residential housing. Further, the PAPA Application and Zone Change Application do not change the underlying zoning designation, which allows rural residential uses. Finally, the Project anticipates future uses after reclamation, which may include residential uses. However, the Board finds that the Project nevertheless furthers the objectives of this goal by providing a material (rock) that is essential to the construction and rehabilitation of many forms of housing in the Portland Metro and surrounding areas. Therefore, the Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 10, to the extent it is applicable at all.

### **Goal 11: Public Facilities and Services.**

**To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

The Property is not located within, or served by, any public or private water or sewer service district. See page 13 of the Staff Report. Further, the Project does not require the extension of public sewer, water, or storm drainage facilities, and Applicant does not propose to extend same. Further, for the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(B) and CCZDO 708.05.H below, which reasons are incorporated herein by reference, the transportation and stormwater systems are adequate to serve the Project, subject to identified conditions. Finally, County Planning staff stated that designating the Property as a significant aggregate site would not affect the planning for public facilities or services by the County or any nearby City. See page 14 of Staff Report. No one contended on the record that the PAPA Application and Zone Change Application would not be consistent with Goal 11. For the foregoing reasons, the Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 11.

## Goal 12: Transportation.

**To provide and encourage a safe, convenient and economic transportation system.**

The Board finds that the Project will further the objectives of this goal by providing a material (rock) that is essential to the construction and reconstruction of a variety of transportation projects, including roads, airports, railroads, sidewalks, and bikeways.

Goal 12 is implemented by the Oregon Transportation Planning Rule ("TPR"), which requires local governments to determine whether or not a proposed PAPA will "significantly affect" an existing or planned transportation facility. OAR 660-012-0060(1). A PAPA will "significantly affect" an existing or planned transportation facility if it will: (1) change the functional classification of a facility; (2) change standards implementing a functional classification system; (3) as measured at the end of the planning period, result in types or levels of travel or access that are inconsistent with the functional classification of an existing facility; or (4) degrade the performance of an existing facility either below applicable performance standards, or if already performing below these standards, degrade it further. *Id.*

LUBA has stated that the initial question under the TPR is "whether the plan amendment causes a net increase in impacts on transportation facilities, comparing uses allowed under the unamended plan and zoning code with uses allowed under the amended plan and zoning code." *Griffiths v. City of Corvallis*, 50 Or LUBA 588, 593 (2005). This is commonly applied to require that an applicant compare the traffic associated with a reasonable worst case scenario development under the existing zoning district with a reasonable worst case scenario under the proposed zoning district.

The Board finds that the Project will not significantly affect any existing or planned transportation facilities. In support of this conclusion, the Board relies upon the "worst case scenario" analysis prepared by Applicant's transportation consultant, Kittelson & Associates, Inc. ("KAI"). In that analysis, KAI compared the reasonable worst-case trip generation scenario of the Property under the existing zoning designation (RRFF-5, with no MAO) with the reasonable worst-case trip generation scenario under the proposed zoning designation (RRFF-5, with MAO). See Appendix H of the Applications. This comparison indicated that the Property would generate more trips under the proposed zoning designation; however, at the end of the planning period (2035), all site access points and off-site intersections were forecast to perform within acceptable performance standards during weekday AM and PM peak hours. Based upon these results, KAI concluded that the Applications would not significantly affect any existing or planned transportation facilities for purposes of the TPR. The Board finds that transportation engineers with both the County and Washington County reviewed and concurred with KAI's conclusions. See pages 15-16 of the Staff Report. No substantial evidence was presented that undermined this testimony.

Therefore, the Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 12 and the TPR.

**Goal 13: Energy Conservation.**

**To conserve energy.**

Based upon the testimony of Applicant and the concurrence of County Planning staff, the Board finds the Project will have at least two significant positive energy consequences. First, the Board finds that mining the aggregate resource will facilitate completion of many needed transportation improvements, which will, in turn, provide greater capacity and smoother road surfaces. As a result, the Board finds that vehicles on roads throughout the region will be able to consume less fuel because they will spend less time idling in traffic and/or confronting substandard road conditions.

Second, the Board finds that the energy consequences of allowing a mine are also positive because the Property is less than one mile from each of the respective city limits of Sherwood, Tualatin, and Wilsonville, all locations where there is a significant amount of growth and demand for aggregate. Locating a mine near these markets will reduce the distance the product must travel to the consumer, resulting in lower fuel consumption. The Board finds that the Property's proximity to major transportation corridors, such as Interstate 5, also reduces fuel consumption and energy impacts compared to more remote locations. As support for this conclusion, the Board accepts Applicant's testimony that a proposed site in Molalla requiring 250 truck trips would generate an additional 3,750 miles in haul distance, add 83 hours of travel time, use an additional 469 gallons of fuel, and add approximately \$15,000 to the project cost. See Applicant letter re: "Discussion of Economic Benefits" dated November 4, 2013 (Exhibit 113). No one presented substantial evidence that undermined this testimony.

The Board finds that the PAPA Application and the Zone Change Application are consistent with Goal 13.

**Goal 14: Urbanization.**

**To provide for an orderly and efficient transition from rural to urban land use.**

The Board finds that Goal 14 is not an applicable approval criterion for three reasons. First, the Property is located outside of the Metropolitan Portland Urban Growth Boundary, and it is not a designated Urban Reserve. Second, the proposal does not involve a change in location of the UGB. Third, the Property is zoned for rural uses, and the proposal does not change this fact.

**Goal 15: Willamette River Greenway.**

**To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.**

The Board finds that no portion of the Property is located in the Willamette River Greenway, and no lands within the Greenway are affected by this proposal. Therefore, the Board finds that Goal 15 is not an applicable approval criterion for the PAPA Application and the Zone Change Application.

**Goal 16: Estuarine Resources**

**To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and**

**To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity, and benefits of Oregon's estuaries.**

The Board finds that no portion of the Property or the designated impact area is located within an estuary. As a result, the Board finds that the Project will not adversely affect any estuarine resources. Accordingly, the Board finds that Goal 16 is not applicable to the PAPA Application and the Zone Change Application.

**Goal 17: Coastal Shorelands.**

**To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and**

**To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.**

The Board finds that no portion of the Property or the designated impact area is located within a coastal shorelands area. As a result, the Board finds that the Project will not adversely affect any coastal shorelands resources. Accordingly, the Board finds that Goal 17 is not applicable to the PAPA Application and the Zone Change Application.

**Goal 18: Beaches and Dunes.**

**To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and**

**To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.**

No portion of the Property or the designated impact area is located within a designated beach or dune. As a result, the Board finds that the Project will not adversely affect beach or dune resources. Accordingly, the Board finds that Goal 18 is not applicable to the PAPA Application and the Zone Change Application.

#### **Goal 19: Ocean Resources.**

**To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.**

The Property does not include or abut any ocean resources, and the Project will not impact any ocean resources. No party contended in the County proceedings that Goal 19 was applicable to the PAPA Application and the Zone Change Application. Therefore, the Board finds that Goal 19 is not applicable to the PAPA Application and the Zone Change Application.

## **II. OREGON ADMINISTRATIVE RULES**

### **OAR 660-023-0180 Mineral and Aggregate Resources**

**(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in (a) through (c) of this section, except as provided in subsection (d) of this section:**

**(a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;**

#### **QUALITY**

The Board finds that a representative set of samples from the site meet ODOT specifications for base rock as required by this rule. As support for this conclusion, the Board relies upon the results of industry-standard tests, which demonstrated that six samples of aggregate materials from the site meet ODOT specifications for base rock, together with expert opinions from two different geologists who independently analyzed the samples collected from the site.

Specifically, the Board finds that the Applicant presented test results reporting that six samples of aggregate materials from the site satisfied applicable criteria set forth in ODOT's *Standard Specifications for Highway Construction* (revised 2008, current

edition) Section 02630 for air degradation, abrasion, and Sodium Sulfate soundness. See Table 1 of Appendix A of the Applications. The Board finds that an ODOT-accredited aggregate testing laboratory, ACS Soils Testing, Inc. ("ACS"), conducted these tests in accordance with industry standard. See Appendix A of the Applications (Aggregate Resource Evaluation and Significance Determination prepared by Kuper Consulting LLC). No party challenged the methodology or results of these tests once the samples were identified. The opponents' primary challenge with respect to the quality of resource, which is discussed more fully below, related to a single sample that failed to satisfy ODOT specifications. The Applicant also submitted a portion of one of the six samples into the record in this matter. See Exhibit 97. No party contended that the submitted sample failed ODOT's specifications. Additionally, no party submitted a different sample from the site that failed ODOT's specifications. The Board finds that the six samples of aggregate material from the site meet applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.

Further, the Board finds that these samples are a "representative set of samples of aggregate material in the deposit on the site" as required by the Goal 5 rule based upon the testimony of two different geologists. First, the Kupers testified that the samples were representative because they followed industry standard in selecting them. See Kuper Consulting letter to Planning Commission dated September 20, 2013 (Exhibit 65b). Specifically, the Kupers testified that they characterized the site and selected samples based upon the Kupers' analysis of published geologic maps, the Kupers' familiarity with the geology in the immediate vicinity (which includes many productive aggregate quarries), the Kupers' review of subsurface work completed by other consultants (including 14 air track borings, which indicated that the resource was consistent across the site, and 11 excavated trenches, which demonstrated the amount of topsoil and weather rock that covered the basalt). *Id.* Further, the Kupers testified that the samples were geographically distributed across the site and spanned the outer edges of the proposed mine in order to allow the Kupers to further analyze the site geology in three dimensions. *Id.*

Second, HGSA testified that the samples were "representative" because they were selected from all three core holes and from varying depths on the site. See HGSA Peer Review of Site Aggregate Resources (Exhibit 90). Further, HGSA noted that the number and location of the samples was reasonable in light of the relatively small size of the site (34 acres) and the well-known geology of the area. *Id.* Specifically, HGSA noted that literature in the field has established that the area encompassing the site is part of the Columbia River Basalt Group, where rock units are estimated to be more than 1,000 feet thick. *Id.* As a result, HGSA concluded that the site warranted less exploration and sampling than a location along Oregon's coast, where the rock body was thinner, more discontinuous, and thus more uncertain. *Id.*

The County finds that these test results and related expert opinions constitute substantial evidence to support the conclusion that the site satisfies the quality threshold of OAR 660-023-0180(3)(a).

Although Ms. Madden and Dr. Lewis contend that the site is not "significant" because a

single sample failed to satisfy ODOT specifications, the Board denies this contention because the Board finds that the Goal 5 rule does not require that each sample from the site meet all ODOT specifications. Rather, the rule requires that a "representative set of samples" meet these specifications.

Further, although Ms. Madden and Dr. Lewis contend that the Applicant has not generated sufficient samples from the site to carry its burden of demonstrating that the Applications satisfy the quality standard of the Goal 5 rule, the Board denies this contention. The Board finds that the only two geologists who testified on the record both opined that the six samples from the site that meet ODOT specifications are "representative" in light of the relatively small size of the site (approximately 34 acres), the varied location and depth of samples, the extensive pre-sampling trenching and air track borings, the established geology of the site, and the existence of six highly productive aggregate mines in the area drawing from the same geological formation. See Appendix A to Applications, Kuper Consulting letter dated September 20, 2013 (Exhibit 65b), and HGSA Peer Review of Site Aggregate Resources (Exhibit 90). No geologists rebutted this testimony or offered a counter-opinion regarding the quality of aggregate material in the deposit on the site.

Although Dr. Lewis contends that the data in the six samples reflected the existence of "two populations" of rock on the site, the Board denies this contention because, as noted above, the only geologists who testified on the record testified with great confidence that the samples were "representative" in nature. Dr. Lewis is not a geologist but a statistician. As a result, the Board finds that Dr. Lewis has expertise with statistics, but he is not an expert in characterizing or analyzing the distribution of subsurface rock materials or in understanding how many samples are necessary to be "representative" for purposes of the Goal 5 rule at a given site. Therefore, the Board finds Dr. Lewis' testimony regarding the quality of the material in the deposit on the site to be less credible than the testimony offered by the Kupers and HGSA on this subject.

Additionally, although Ms. Madden contends that the Applicant is proposing improper "blending" of high-quality and low-quality samples to obtain samples that satisfy the quality standard, the Board denies this contention because it misconstrues the facts. In fact, the Applicant did not conduct any such "blending" in order to demonstrate compliance with the Goal 5 rule. As explained in their significance analysis, the Kupers analyzed each of the samples independently without blending. See Appendix A of the Applications. The Kupers' reference to "blending" referred to the common practice of blending higher quality basalts with lower quality basalts once mining is occurring on a site, long after significance has been demonstrated. Further, the Kupers offered the statement to explain that, even if lower quality aggregate exists, it can and will ultimately be used, which justifies the Kupers' point that the intent of the "significance" standards is to ensure that only commercially viable mines are approved. See Kuper Consulting LLC letter dated September 20, 2013 (Exhibit 65b).

Finally, although Ms. Madden suggests that the Applicant's consultants engaged in "cherry-picking" of more favorable samples in an effort to skew the results, HGSA refuted this contention by explaining that the Kupers adhered to industry standard in

their selection of aggregate samples. See HGSA Letter dated November 7, 2013 (Exhibit 143). Further, HGSA noted that the rule itself calls for “samples of aggregate material,” not samples of non-aggregate materials. *Id.* The Board further finds that Ms. Madden has not presented any evidence of improper sample selection by the Applicant or its consultants. For these reasons, the Board denies Ms. Madden’s contentions on this issue.

On the basis of the testimony presented, and for the reasons stated above, the Board finds that a representative set of samples of aggregate material in the deposit on the site meets applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.

## QUANTITY

The Board finds that the site is located in the “Willamette Valley” as that term is defined in OAR 660-023-0180(1)(m) because the site is located in Clackamas County. Therefore, the Board finds that the rule requires that the estimated amount of material in the deposit on the site must exceed 2,000,000 tons. The Board finds that the estimated amount of quality material in the deposit on the site is more than 2,000,000 tons. As support for this conclusion, the Board relies upon the Kupers’ expert testimony that at least 9,500,000 tons of in-place aggregate exists in the deposit on the site. See Appendix A of the Applications. The Kupers reached this conclusion by examining a base topographic map and the logs of the on-site subsurface exploration; making allowances for setbacks, slopes, and the anticipated mining depth; and then interpolating the location of the resource between known points of elevation. *Id.* Westlake Engineering (“Westlake”) supplemented this analysis by conducting industry-standard volumetric models. *Id.* The Board finds that the Kupers’ analysis and testimony is particularly credible in light of their extensive expertise characterizing aggregate mines. See Appendix N of the Applications.

The Board also finds support for its conclusion that the estimated amount of quality material in the deposit on the site exceeds 2,000,000 tons in testimony presented by HGSA, which estimated that there were 14,997,868 mineable tons of aggregate material in the deposit on the site. See HGSA report dated October 23, 2013 (Exhibit 90). HGSA determined that the “proven reserve” within 100 feet of the surface, after factoring in buffers and slopes, was at least 4,532,459 tons. *Id.* The Board finds this independent analysis to be compelling because J. Douglas Gless, the author of the HGSA report, also has extensive experience estimating the quality and quantity of aggregate materials, as set forth on his resume in the record. *Id.*

The Board finds that opponents’ contentions to the contrary do not undermine the Kupers’ analysis and conclusions. First, although Dr. Lewis raises various contentions that call into question the Applicant’s sampling methodology, the Board denies these contentions. For example, although Dr. Lewis contends that because the Applicant has not taken enough samples, the Applicant could be overstating the volume of aggregate supply by nearly double, the Board denies this contention for two reasons. First, for the reasons stated in response to the quality standard in this rule, the Board finds that the

Applicant's sampling methodology is sound, and thus, the Applicant has not overestimated the amount of material on the site. Second, the Board finds that, even assuming Dr. Lewis is correct and approximately 50% of the material is "bad rock" (to use his term), the estimated amount of aggregate material in the deposit on the site is still more than 4,750,000 tons, which exceeds the minimum quantity requirements of the rule by more than double. Additionally, although Dr. Lewis contends that the Applicant's analysis is incomplete because the Applicant has only collected samples within 100 feet of the surface, the Board denies this contention as well because, even if all of the material deeper than 100 feet below the surface failed to meet quality specifications, HGSA's "proven reserve" of 4,532,459 tons is all located within 100 feet of the surface.

Further, although Dr. Lewis and Ms. Madden contend that the variability in the sampling data indicates that there are two populations of rock in the deposit on the site, the Board denies this contention because it is irrelevant. The relevant inquiry under the quantity standard is whether the estimated amount of quality material is more than 2,000,000 tons. The Applicant has easily demonstrated that this is the case. That there may be some evidence that some material in the deposit on the site would not meet quality standards does not take away from the fact that the estimated amount of quality material is more than four times the minimum threshold.

The Board denies Dr. Jenkins' contentions for another reason: Unlike the Kupers, Dr. Jenkins is not a geologist; he is a statistician. Thus, for the reasons explained in the findings addressing the quality standard, the Board finds Dr. Lewis' testimony regarding the quantity of the material in the deposit on the site to be less credible than the testimony offered by the Kupers and HGSA on this subject.

Finally, although Ms. Madden contends that HGSA offered a non-conservative yardage to tonnage conversion rate (1.25) in estimating the amount of aggregate material in the deposit on the site, the Board denies this contention based upon the rebuttal offered by HGSA, which explained that a more typical conversion rate would be 1.7 tons per cubic yard. See HGSA letter dated November 7, 2013 (Exhibit 143). HGSA also noted that its estimate of the quantity of material on the site was especially conservative because HGSA first subtracted overburden and non-aggregate quality layers before applying the conservative conversion rate of 1.25 tons per cubic yard. *Id.*

## **LOCATION**

The Board finds that the site meets the locational requirements of this rule for three reasons. First, for the reasons explained above, which reasons are incorporated by reference, the Board finds that the site is located in the "Willamette Valley" and meets the quality and quantity thresholds applicable to an aggregate site in the Willamette Valley (more than 2,000,000 tons).

Second, the Board finds that the site is located in an area replete with aggregate resources. As support for this conclusion, the Board relies upon testimony from the Kupers that the site is underlain by basalt flows associated with the Columbia River Basalt Group Grande. See Appendix A of the Applications. These flows have been

associated with productive aggregate mines in the area. The Board finds that there are numerous active and inactive aggregates quarries in the surrounding area, including to the north, Eaton Quarry, Coffee Lake Quarry, and Tigard Sand & Gravel; to the north and east, Town Quarry, Knife River Quarry, and a reclaimed quarry that is now the Tualatin Fire & Rescue Department facility; and to the south, the inactive Clackamas Quarry, which has been reclaimed into a residential home site. *Id.* Additionally, the Board finds that the Property was formerly permitted for aggregate mining in 1982. *Id.* Finally, the Board finds that the quarries within the geographic area that includes the Property produce good to high quality aggregate for base, riprap, fill, and embankment fill materials. *Id.*

Third, for the reasons explained in response to subsection (d) below, which reasons are incorporated herein by reference, the Board finds that the site consists entirely of Class III, IV, and VII soils. Therefore, the resource on the site is not rendered not significant due to the presence of high-quality soils in this location.

**(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or**

The Board finds that this subsection is not applicable because the County has not adopted standards establishing a lower threshold for significance than subsection (a) of this section.

**(c) The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.**

The Board finds that the Property is not significant under this subsection because it was not on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.

**(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:**

**(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or**

**(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:**

**(ii) 25 feet in Polk, Yamhill, and Clackamas counties**

The Board finds that the criteria in paragraphs (A) and (B) do not apply because, according to the applicable NRCS maps, the site consists entirely of Class III, IV, and VII soils. See Aggregate Resource Evaluation and Significance Determination prepared by Kuper Consulting, LLC in Appendix A of the Applications. Therefore, no Class I or II soils are present. Furthermore, as further explained in Appendix A, after reviewing water well reports and the area's geologic conditions, the Kupers opined that the basalt bedrock on the site extends to an elevation of at least -160 feet MSL. Because the average existing elevation of the Property is approximately 150 MSL, the Board finds that the average thickness of the mining area is approximately 300 feet, well above the 25-foot minimum. For these reasons, the Board finds that the Property is not rendered not significant due to soils.

In sum, the Board finds that the site is significant based upon its quality, quantity, and location.

**(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.**

The Board finds, for two reasons, that the County has correctly processed the Applications. First, as explained below, the County applied the criteria in subsections (a) through (g) of this section to decide that mining is permitted on the Property. Second, the Board finds that it is adopting an ordinance approving the Applications on February 27, 2014, a date that is within the time period allowed by this rule, as extended by the Applicant. Specifically, the County deemed the Applications complete on July 16, 2013. The Applicant provided the County two separate extensions to the County's obligation under ORS 215.427. These extensions were dated December 10, 2013 and January 28, 2014 and each provided the County an additional 30 days to take final action on the application for a total extension period of 60 days. Therefore, as extended, the County had 240 days in which to make a decision under this rule, and the County has made its decision within 226 days. No one contended that the County committed a procedural error under this section. Therefore, the Board finds that it has complied with the procedural requirements of this section.

**(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather**

**than the boundaries of the existing aggregate site and shall not include the existing aggregate site.**

The Board finds that the impact area for purposes of identifying conflicts with the proposed mine under the Goal 5 rules is limited to 1,500 feet from the boundaries of the mining area ("Impact Area"). See map at Tab D, Exhibit 6 of Applications. For the reasons explained below, the Board finds that there is no factual evidence in the record that indicates significant potential conflicts beyond this distance.

### **EXPANSION OF IMPACT AREA TO ADDRESS NATURAL RESOURCE IMPACTS**

Opponents contend that the County should expand the Impact Area to include additional Goal 5 inventoried resources to the north and to the southeast of the Property, the Board denies these contentions for three reasons. First, the Board finds that there is no basis to expand the Impact Area to include additional Goal 5 resources. OAR 660-023-0180(5)(a) permits expanding the Impact Area beyond 1,500 feet from the boundaries of the mine, but only when "factual information indicates significant potential conflicts beyond this distance." Opponents submitted a map and a paragraph-long explanation from their attorney identifying other potential resources. See letter from Erin Madden dated September 16, 2013 and attached map (Exhibit 48). The map and letter do not explain in what way the development of the mine will cause a "significant potential conflict" with these resources. As such, the Board finds that the opponents have not presented "factual information" sufficient to require the Board to expand the Impact Area to include the additional resource areas.

Second and in the alternative, the Board finds that Ms. Madden and Mr. Leyda have presented "factual information" of "significant potential conflicts" with these additional resources based upon "loss of forested and wetland habitat on the proposed quarry property within an extensive wildlife corridor;" however, the Board finds that there will not be significant potential conflicts on this basis, and the Board therefore declines to expand the Impact Area. As support for this conclusion, the Board relies upon the testimony of scientist Phil Scoles of Terra Science Inc. ("TSI"), who concluded that development of the quarry "would not create a constriction [in the wildlife corridor] that adversely affects wildlife." See TSI Letter dated October 29, 2013 (Exhibit 98). Mr. Scoles reached his conclusion after examining the entire context of the corridor, which begins well north of the Property near the Tualatin River and then continues south to the Willamette River. See map attached to TSI Letter dated October 29, 2013 (Exhibit 98). As the map depicts, the corridor varies in width from approximately 3100 feet in width to as few as 75 feet in width. *Id.* Mr. Scoles calculated that, even with development of the quarry, the corridor would be approximately 1600 feet wide, much larger than other areas of constriction, and still sufficient to allow animals to feed, pair, and nest, in part due to the additional buffers installed around the mining area. *Id.* Although the Oregon Department of Fish and Wildlife ("ODFW") presented a wildlife corridor map, the Board finds that this map does not undermine the TSI map because the ODFW map is very generalized in nature, does not identify the Property, does not identify the locations of any Goal 5 resources, and is not accompanied by any rebuttal of the TSI map. See

ODFW Letter dated September 16, 2013 (Exhibit 32). The Board also finds that Mr. Leyda did not directly rebut Mr. Scoles' October 29, 2013 testimony regarding the wildlife corridor at all.

Further, although Ms. Madden testified that the home ranges for bobcat, coyotes, and woodpeckers extended from several thousand acres to several kilometers and thus the Impact Area should be expanded commensurate with same, the Board finds that it is unreasonable to conclude that there will be significant potential conflicts over such a broad area. Rather, as Mr. Scoles testified, the Property represents a very small percentage of the total home range for these animals. See TSI Letter dated November 8, 2013 (Exhibit 141). The Board finds that a reasonable person would rely upon this testimony to conclude that there would not be significant potential conflicts due to loss of a wildlife corridor caused by the Project.

The Board relies on three other bases to conclude that there is insufficient evidence of "significant potential conflicts" beyond 1,500 feet. First, the Board relies upon Mr. Scoles' testimony that the existence of wildlife within the area, which is already dominated by aggregate mines, is *prima facie* evidence that wildlife have tolerated and adapted to impacts of mines on habitats. See TSI Letter dated November 4, 2013 (Exhibit 119). Second, the Board finds that the Project conditions of approval will adequately control impacts to offsite natural resources relating to dust, noise, vibration, lighting, traffic, groundwater, and stormwater. *Id.* The fact that these conditions protect resources within the 1,500-foot area ensures that locations that are even farther away are also adequately protected. Third, the Board relies upon and incorporates by reference the findings set forth below in response to opponents' contentions concerning conflicts with Goal 5 resources, as a basis to conclude that there is no basis to expand the Impact Area.

## **EXPANSION OF IMPACT AREA TO ADDRESS TRAFFIC IMPACTS**

Although the City of Wilsonville contends that the County should expand the impact area to consider impacts to Day Road and Graham's Ferry Road, the Board finds that there is no legal basis to expand the Impact Area on these grounds. For the reasons explained below in response to OAR 660-023-0180(5)(b)(B), the Board finds that the Applicant's Transportation Impact Analysis prepared by Kittelson & Associates, Inc. ("TIA") complies with the requirements of that subsection because it evaluates potential conflicts to local roads used for accessing the mine within one mile of the entrance to the mining site, and this radius includes an intersection with an arterial road. See TIA at Appendix H of the Applications. Further, the TIA addresses each of the potential conflict areas recited in the rule. *Id.*

The Board finds that the plain language of the rule only requires expanding the one-mile radius when local roads accessing the mine have not yet intersected with an arterial road. In the case of the proposed quarry, SW Morgan Road is a local road, and it first intersects with an arterial at SW Tonquin Road, which is well within one mile of the

Property. Therefore, there is no basis in this case to expand the impact area to examine transportation conflicts outside of a mile.

Even if there were a legal basis to expand the impact area for transportation review, the Board finds that the City has not established that the roads in question (Grahams Ferry and Day) are classified as "local roads" as required by the rule. LUBA has held that the term "local roads" refers to streets classified as local roads in the applicable transportation system plan. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999). Impacts to arterials (after the first arterial) are not relevant. The Board finds that Grahams Ferry is classified as an arterial road, and Day Road is a major arterial road (but neither is the first arterial road intersected). Therefore, the Board denies the City's contention on this issue.

Based upon the foregoing, the Board limits the Impact Area to 1,500 feet from the boundaries of the mining area.

**(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following:**

**(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.**

The Board adopts joint findings in response to these two subsections below. First, regarding "approved uses," Applicant has identified the following "approved uses" within 1,500 feet from the boundaries of the mining area:

<u>Location</u>	<u>Existing Use</u>
North	Undeveloped Dog Kennel
Northwest	Tri-County Gun Club

	Eaton Quarry Tualatin River National Wildlife Refuge
Northeast	Tigard Sand & Gravel and Knife River Coffee Lake Quarries
East	Knife River Quarry Town Quarry Tualatin Valley Fire and Rescue Department training center
West	Rock Creek Rural residential dwellings
South	Rural residential dwellings Open farmland

County Planning staff concurred with this list of uses. See Staff Report at 38.

Although Andrea Patrick testified that she operates a dog boarding kennel on her property within the Impact Area, the Board finds that this type of operation is a conditional use in the applicable RRFF-5 zoning district, and the County has no record of an approved conditional use authorizing the kennel on the Patricks' property. See Email Correspondence from R. McIntire (Exhibit 117). Additionally, even if this operation were permitted, it would require minimum setbacks of at least 200 feet from all property lines. *Id.* Therefore, for purposes of review of the Applications only, the Board finds that the kennel is not an "approved use," and the Board is not required to consider conflicts with the kennel use in this location.

No party has identified any other allowed uses within 1,500 feet of the proposed mining and processing area. Therefore, the Board finds that this list accurately describes the "allowed uses" within the Impact Area.

**(b)(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;**

As explained in more detail below, the Board finds that there are limited conflicts due to noise, dust, or other discharges to sensitive uses within the Impact Area; however, the Board finds that there are reasonable and practicable measures that will minimize these conflicts. The Board adopts these reasonable and practicable measures as conditions of approval in order to assure that the identified conflicts are minimized.

i. Noise:

IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the noise impacts of the Project:

- Pursuant to DEQ classifications, the Property is a “previously unused industrial or commercial site,” because it has not been used by an industrial or commercial noise source in the 20 years prior to the commencement of mining operations on the Property. OAR 340-035-0015(47).
- As a result, the more restrictive of the following standards apply to the mine: (1) the maximum allowable noise levels for industrial and commercial noise sources set forth in Table 8 of OAR 340-035-0035, which are set for 1%, 10%, and 50% of an hour; or (2) the “ambient noise degradation” levels which require that any “new industrial or commercial noise source” on a “previously unused industrial or commercial site” cannot produce noise sufficient to cause existing ambient noise levels to increase by more than 10 decibels (“dB”) pursuant to OAR 340-035-0035(1)(b)(B).
- The more restrictive of the two DEQ standards—and thus the one applicable to the Property—is the “ambient noise degradation” level (ambient noise levels plus 10 dB).
- There are no nearby residences north of the site that would be adversely affected by noise from the mine.
- There are 12 noise-sensitive uses (all single-family residences) within 1,500 feet south or west of the site.
- Blasting noise was not expected to exceed the applicable DEQ standard at any residence, assuming the blaster takes appropriate steps to minimize the size of the charges used to fracture the rock and the number of holes detonated simultaneously.
- Three of the identified residences in the Impact Area would experience noise conflicts under a worst-case noise scenario because the predicted loudest hourly statistical noise levels at these residences would exceed the identified “ambient noise degradation” level. This worst-case scenario would occur when excavation operations occur above the 112-foot elevation in some portions of the excavation area and when the processing equipment is located in the initial processing area.

As support for these conclusions, the Board relies upon the testimony of the Applicant's acoustical engineer, Kerrie G. Standlee, P.E. of Daly Standlee and Associates (“DSA”). See Tonquin Quarry Noise Study dated September 18, 2013 (Exhibit 65c). In that

study, DSA reached each of the conclusions adopted by the Board as findings above. *Id.* The Board finds DSA's testimony to be particularly credible due to DSA's substantial experience and its utilization of industry-standard equipment and methodologies. See Appendix N of the Applications. The Board finds that a reasonable person would rely upon DSA's testimony to reach the above conclusions regarding noise impacts associated with the Project.

Further, the Board finds that opponents' contentions to the contrary do not undermine DSA's testimony. The Board addresses each of the opponents' contentions below.

## **METHODOLOGY CONCERNS AS TO RESIDENCES**

First, although Erin Madden contends that DSA incorrectly measured ambient noise levels and incorrectly predicted noise levels from the Project as to area residences, the Board denies this contention because it misconstrues applicable law and the evidence in the record. The Board finds that DSA correctly measured ambient noise levels and predicted future noise levels in its analysis.

Although Ms. Madden contends that DSA erred by failing to make noise measurements either 25 feet toward the noise source from affected residences or that point on the noise-sensitive property line nearest the noise source, the Board denies this contention because the Board finds that, as permitted by OAR 340-035-0035(3), DSA utilized an alternative measurement approach outlined in DEQ's "Sound Measurement Procedures Manual" to conduct ambient noise measurements for residences in the vicinity of the Property. See Memorandum from DSA dated September 27, 2013 (Exhibit 66b) and Memorandum from DSA dated November 8, 2013 (Exhibit 142). Further, the Board finds that DSA was justified in utilizing this alternative measurement approach because, otherwise, area residents would have been able to deny access to their properties and thus thwart DSA's ability to conduct noise measurements. *Id.*

Additionally, although Ms. Madden contends that DSA erred by conducting noise predictions at the residences rather than "25 feet toward the noise source from that point on the noise sensitive building nearest the source," the Board denies this contention because DEQ's "Sound Measurement Procedures Manual" does not require predictions at the 25-foot location unless that is the loudest location. See Memorandum from DSA dated September 27, 2013 (Exhibit 66b).

Further, the Board finds that DSA correctly made noise predictions for the two affected residences. First, as to residence R5, the Board finds that, due to topography and the "shadow effect" of berms, the location 25 feet toward the Project would be in a "noise reduction" zone while the residence R5 would not. Therefore, DSA correctly selected a prediction point at the eastern edge of the residence where the noise reduction effect was less. Similar circumstances prevail as to residence R12. As support for its conclusions regarding residences R5 and R12, the Board relies upon DSA's rebuttal of Ms. Madden's contention. *Id.*

Although Ms. Madden offered a response to DSA's rebuttal, the Board finds this response restated her previous points on this issue and the Board further finds that no party provided a compelling rebuttal to DSA's September 27, 2013, memorandum. Compare Madden letter dated September 24, 2013 (Exhibit 55) and Madden letter dated November 4, 2013 (Exhibit 132). Accordingly, the Board agrees with the substantial evidence presented by DSA regarding the measurement and prediction of noise levels near residences.

## **METHODOLOGY CONCERNS AS TO REFUGE**

Further, although Madden contends that the Applicant failed to make ambient noise measurements or predictions for impacts to the Refuge property, the Board finds that Ms. Madden is mistaken on both of these points. First, the Board finds that, with the Refuge's permission, DSA measured ambient noise levels at a location on the Refuge property. See DSA Study, Figure 4 (Exhibit 65c) and Refuge permission form attached to DSA memorandum dated November 8, 2013 (Exhibit 142). Second, DSA utilized a variety of locations to predict noise impacts (including many points on the Refuge), as shown in the DEQ compliance boundaries. See DSA Study, Figures 5, 6, 8, and 9 (Exhibit 65c) and DSA memorandum dated November 8, 2013 (Exhibit 142). Opponents did not present evidence that rebutted or undermined this evidence. Therefore, the Board denies Ms. Madden's contention on this issue.

Finally, although Ms. Madden and Mr. Leyda contend that noise impacts from the Project will adversely affect wildlife, the Board denies this contention based upon the findings and evidence cited in response to OAR 660-023-0180(5)(b)(D), which findings are incorporated herein by reference.

## **IMPACTS TO CITY OF TUALATIN**

Additionally, although the City of Tualatin contends that the Project will generate noise levels that will adversely affect livability in the City, the Board denies this contention because DSA determined that "worst case" predictions of noise impacts from the mine on the nearest residences in Tualatin would be well below existing ambient noise levels at these locations and thus would have no discernable impact on Tualatin residents. See DSA memo dated October 21, 2010 (Exhibit 120). No one presented substantial evidence to rebut this testimony. Therefore, the Board finds that noise from the Project will not constitute a significant conflict with Tualatin residences.

## **BLASTING NOISE**

Although Ms. Madden contends that noise associated with blasts at the Project will likely be 133 dBA and thus exceed the pain threshold, the Board finds that Ms. Madden misconstrues the testimony of the Applicant's blasting expert, Jerry Wallace. In fact, Mr. Wallace testified that the applicable limit was 133 dB(L), not 133 dBA. See Wallace letter dated November 7, 2013 (Exhibit 138). As DSA explained, the applicable dB(L) standard referenced by Mr. Wallace is an overpressure limit, where the majority of the

energy is below the low-frequency cut-off of hearing for a healthy adult. See DSA memorandum dated November 8, 2013 (Exhibit 142). By contrast, the dBA limit, which is not applicable here, refers to the sound energy that falls in the range of human hearing. *Id.* DSA further stated that a sound level of 133 dB(L) would correspond to an A-weighted overall sound level significantly lower than 133 dBA and nowhere near the pain threshold. *Id.* Based upon the expert testimony of Mr. Wallace and DSA, the Board finds that noise from blasts at the Project will not exceed the pain threshold.

The Board further finds that noise from blasts at the site will not create a significant conflict with sensitive uses because such noise will not exceed the applicable standard of 98 dBC, slow response, set forth in OAR 340-035-0035. As support for this conclusion, the Board relies upon the testimony of Mr. Wallace, who stated that it was feasible to meet the DEQ standard, subject to compliance with industry standard practices set forth in the blasting plan. See Wallace letter dated November 7, 2013 (Exhibit 138). The Board finds that imposing the following condition of approval will ensure that blasting noise will comply with the DEQ standard and thus, by definition, ensure that blasting noise will not create a significant conflict:

“55a. Noise generated by blasting activities shall comply with the DEQ noise standard of 98 dBC, slow response, at all noise sensitive receptors, as identified in the Tonquin Quarry Goal 5 Noise Study dated September 18, 2013.”

#### MEASURES TO MINIMIZE CONFLICT:

The Board finds that reasonable and practicable measures will minimize the limited conflicts identified by DSA. Specifically, the Board finds that implementing the following mitigation measures on the site will ensure that noise levels at each of the residences would conform with DEQ standards:

- To mitigate the drill noise, use a close-up barrier or curtain system and construct a barrier along the south and west sides of the mine
- To mitigate noise from the crushing and screening equipment, use polyurethane or rubber screens or close-up barriers around the screens and barriers around the initial processing area

As support for this conclusion, the Board relies upon DSA's conclusions in the noise study. See Tonquin Quarry Noise Study (Exhibit 65c). The Board has incorporated these reasonable and practicable mitigation measures into the conditions of approval for the Project as follows:

- “52. The Quarry operator shall comply with the final noise study prepared by Daly-Standlee and Associates, Inc. (DSA) dated September 23, 2013 and the supplemental letter dated September 5, 2013 by DSA.”

- “53. Noise mitigation barriers shall be constructed in accordance with the DSA report along portions of the western and southern property lines.”
- “54. The Quarry operator shall utilize polyurethane or rubber screens or proximate berms or buffers in accordance with the DSA report in order to mitigate the noise impacts associated with operation of crushing and screening equipment when it is located in Crusher Operating Area #1; this requirement ends when the crushing and screening equipment is relocated to Crusher Operating Area #2. Both Crusher Operating areas are depicted on Figure #3 of the DSA report.
- “55. The Quarry operator is not required to monitor or mitigate noise impacts to any off-site dwelling or property in the event the owner of the off-site dwelling or property grants the Quarry operator a written and recorded noise easement allowing unmonitored and unmitigated noise impacts from the Quarry on the property and/or at the dwelling.”

Because DSA has determined that these measures will ensure conformance with the applicable DEQ standard, the Board finds that these measures will, by definition, minimize noise conflicts from the mine for purposes of OAR 660-023-0180. Accordingly, the Board adopts them as conditions of approval for the Project.

ii. **Dust:**

**IDENTIFICATION OF CONFLICTS:**

The Board finds that there will be potential dust conflicts associated with the Project, at least when mining operations are occurring above the water-bearing zones. As support for this conclusion, the Board relies upon the analysis of projected dust impacts of the mine prepared by the Applicant’s air quality expert, Brian Patterson, Ph.D. of Golder Associates (“Golder”). See Appendix I of the Applications.

The Board finds that Dr. Patterson’s testimony is particularly compelling because it is based upon his experience and expertise in evaluating the air quality impacts of other, more intensive mining operations and his knowledge of DEQ’s air quality standards set forth in OAR chapter 340 division 208.

**MEASURES TO MINIMIZE CONFLICTS:**

The Board further finds that these conflicts are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

- “70. The main facility access road shall include a gravel surface consisting of crushed rock with nominal sizing of at least one inch maximum dimension within 300 feet of any public road.

- “71. The main facility access road shall be watered to prevent the generation of dust within 300 feet of any public road.
- “72. The operator shall maintain a truck wheel wash system for product trucks exiting the access road to the public road to reduce soil track-out onto the public road.
- “73. Onsite surfaces travelled by off-road or on-road mobile sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.
- “74. Water sprayers shall be used to control dust emissions from crushers and screens operating onsite.”

As support for this conclusion, the Board relies upon Dr. Patterson’s testimony that implementing the following mitigation measures on the site would ensure that fugitive dust levels would conform with DEQ standards. See Appendix I of the Applications. The Board finds that, because Dr. Patterson concluded that these measures would ensure conformance with DEQ standards, these measures will, by definition, minimize dust conflicts from the mine for purposes of OAR 660-023-0180. Although some opposition testimony expressed concerns about dust, the Board finds that it did not undermine the evidence presented by Dr. Patterson.

Based upon the evidence cited above, the Board finds it necessary to impose the above five conditions on its approval of the Project to ensure conformance with applicable DEQ dust standards and to minimize dust conflicts associated with the Project.

### iii. Other Discharges:

The Board finds that other potential discharges at the site include: (1) diesel engine emissions from onsite mobile equipment and vehicle travel; (2) combustion byproduct emissions from use of explosives during blasting operations; and (3) stormwater.

### Diesel Engine Emissions:

#### IDENTIFICATION OF CONFLICTS:

The Board finds that there will be potential conflicts with allowed uses in the Impact Area resulting from the use of mining equipment and vehicles that generate diesel engine exhaust, which contains pollutants such as nitrogen oxides, carbon monoxide, sulfur dioxide, and particulate matter. As support for its conclusion, the Board relies upon the Golder report. See Appendix I of the Applications.

#### MEASURES TO MINIMIZE CONFLICTS:

The Board further finds that these conflicts are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

- "45. The Quarry Operator shall comply with OAR 340-200 through 340-246 requirements.
- "46. The Quarry Operator shall comply with 40 CFR Part 60 Subpart OOOO requirements."
- "52. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement can be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.
- "53. Onsite idle times for heavy heavy-duty diesel truck engines will be limited to no more than five minutes per trip."

As support for this conclusion, the Board relies upon Dr. Patterson's testimony that implementing these measures would ensure that diesel emission levels would conform with DEQ and EPA standards. See Appendix I of the Applications. The Board finds that, because Dr. Patterson concluded that these measures would ensure conformance with applicable DEQ and EPA standards, these measures will, by definition, minimize diesel emission conflicts from the mine for purposes of OAR 660-023-0180. The Board finds that Dr. Patterson's testimony was un rebutted.

Based upon the evidence cited above, the Board finds it necessary to impose the above four conditions on its approval of the Project to ensure conformance with applicable DEQ and EPA air quality standards and to minimize conflicts resulting from diesel exhaust associated with the Project.

### **Combustion Byproduct Emissions:**

#### **IDENTIFICATION OF CONFLICTS:**

The Board finds that there will be no potential conflicts associated with combustion byproducts (including criteria pollutants such as nitrogen oxides, carbon monoxide, and particulate matter) resulting from explosives used in blasting at the Project. As support for this conclusion, the Board relies upon the Golder report, which analyzed the release of these combustion byproducts and determined that they would not create conflicts with residential uses in the Impact Area because these emissions are very short-lived. See Appendix I of the Applications. The Board also relies on the fact that there was no rebuttal testimony.

#### **MEASURES TO MINIMIZE CONFLICTS:**

Because there are no identified conflicts associated with combustion byproduct emissions, the Board finds that it is not required to identify or adopt measures that would minimize such conflicts.

**Water:**

**IDENTIFICATION OF CONFLICTS:**

The Board finds that there will be no potential conflicts with approved uses in the Impact Area due to stormwater discharges. As support for this conclusion, the Board relies upon two sources. First, as to stormwater, the Board relies upon testimony from the Project civil engineer, Westlake. See Offsite Stormwater Analysis dated April 20, 2013 at Appendix D of the Applications. As explained in Westlake's report, Applicant will develop and implement a stormwater control plan in accordance with the Best Management Practices in the Water Environment Services Erosion Prevention and Settlement Control Planning and Design Manual dated December 2008. *Id.* Further, Westlake explained that the Applicant has designed the Project such that there will be no offsite stormwater point discharge from the Property. *Id.* In short, there will be no stormwater flowing from the Property to offsite locations.

The Board finds that there will be potential conflicts with approved uses in the Impact Area due to the Project's use of replenishment water to the offsite portions of Wetlands B and C.

The Board further finds that there will be potential conflicts with approved uses in the Impact Area in the event Applicant attempts to counteract groundwater dewatering by use of re-injection measures.

**MEASURES TO MINIMIZE CONFLICTS:**

Because there are no identified conflicts associated with offsite stormwater discharges, the Board finds that it is not required to identify measures that would minimize such conflicts.

The Board finds that the potential conflict associated with using replenishment water is minimized to a level that is insignificant for the reasons set forth in these Findings in response to OAR 660-023-0180(5)(b)(D) pertaining to replenishment water and the retained wetlands, and subject to imposing Conditions 59-64. These reasons and conditions are incorporated herein by reference.

The Board finds that the potential conflict associated with the use of re-injection measures to counteract groundwater dewatering is minimized to a level that is insignificant for the reasons set forth in these Findings in response to CCZDO 708.05.H pertaining to groundwater quality and quantity, and subject to imposing Conditions 45-

51, including Condition 49a. These reasons and conditions are incorporated herein by reference.

**(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;**

#### IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to each potential conflict to local roads used for access and egress to the mining site within one mile of the entrance to the mining site:

- Sight Distance: There are existing trees, shrubs, roadside embankment slopes, and other obstructions along SW Tonquin Road and SW Morgan Road that are located within the recommended intersection sight triangles at both the SW Tonquin Road/SW Morgan Road intersection and the proposed site access driveway on SW Morgan Road. This may create a potential conflict to local roads.
- Access Spacing: The proposed site access driveway on SW Morgan Road is located approximately 415 feet south of the SW Tonquin Road/SW Morgan Road intersection and thus exceeds both County and Washington County minimum spacing standards for a full-access driveway.
- Road Capacity: The SW Tonquin Road/SW Morgan Road intersection and the proposed site access driveway on SW Morgan Road are forecast to operate within acceptable performance standards established by Washington County (V/C ratio of 0.90 or less) and the County (LOS D or better), respectively, during the AM and PM peak hours in both 2015 and 2035, with the proposed mine operation. No road capacity improvements are required as a result of the proposed development.
- Cross Section Elements: SW Tonquin Road has a two-lane cross-section with a pavement width of approximately 24 feet, which is adequate to accommodate traffic generated by the mine. As needed, the roadway will be widened to accommodate a new westbound left-turn lane. SW Morgan Road does not currently meet the County's cross-section standards for the applicable road classification.

- Horizontal and Vertical Alignment: The horizontal alignment of the affected segment of SW Morgan Road is appropriate. Although the horizontal alignment of SW Tonquin Road is generally acceptable, Washington County is proposing an improvement project that will substantially realign this segment of the roadway to increase the radii of a couple of curves along SW Tonquin Road and improve horizontal alignment in these locations. Washington County's project is funded and scheduled for construction in spring 2015. Vertical alignments of both SW Tonquin and SW Morgan Roads are adequate.
  
- Truck Turning: The existing pavement width within the SW Tonquin Road/SW Morgan Road intersection is adequate to safely accommodate the turning movements of trucks that will serve the mine; however, the lack of pavement markings to provide defined lane lines, stop bars, and pavement arrows could create a safety conflict.
  
- Westbound Left Turn Lane: After modeling existing conditions, KAI determined that the SW Tonquin Road/SW Morgan Road intersection currently meets the threshold for a westbound left-turn lane on SW Tonquin Road. Although the turn lane is not required for capacity or operational reasons, the lack of a separate turn lane in this location could create a safety conflict.

As support for these conclusions, the Board relies upon the testimony of the Applicant's traffic engineer, Kittelson & Associates, Inc. ("KAI"), who completed an analysis of existing conditions, projected transportation impacts of the proposed mine, and compliance with applicable standards. See TIA in Appendix H of the Applications. In the TIA, KAI reached each of the conclusions adopted by the Board as findings above.

In sum, the Board finds that there will be potential conflicts to local roads associated with the Project due to: (1) inadequate sight distance at both the SW Tonquin Road/SW Morgan Road intersection and the proposed site access driveway on SW Morgan Road; (2) potential safety conflicts at the SW Tonquin Road/SW Morgan Road intersection due to the lack of pavement markings to provide defined lane lines, stop bars, and pavement arrows; and (3) potential safety conflicts on SW Tonquin Road due to the lack of a separate westbound left-turn lane.

#### MEASURES TO MINIMIZE CONFLICTS:

The Board further finds that reasonable and practicable measures will minimize these conflicts. Specifically, KAI concluded that implementing the following mitigation measures on the site would minimize these potential conflicts to local roads for purposes of OAR 660-023-0180:

- Prior to mine operation, adding pavement markings on SW Morgan Road at the approach to the SW Tonquin Road intersection to provide defined lane lines, stop bars, and pavement arrows.

- Clearing and/or modifying existing trees, shrubs, roadside embankment slopes, and other obstructions along both SW Tonquin Road and SW Morgan Road within the areas shown on Figures 13 and 14 of the TIA to provide the required sight distances consistent with County standards.
- Adding a westbound left-turn lane at the SW Tonquin Road/SW Morgan Road intersection as a potential safety enhancement, with Applicant only required to pay its proportionate share for the improvement, consistent with the recommendation of Washington County staff.

Although Ms. Madden contends that Applicant has not demonstrated that it is feasible to comply with the condition relating to clearing vegetation and other obstructions because some of the vegetation and obstructions are located on properties owned by third parties, the Board denies this contention. In fact, the Applicant responded to this contention by submitting an executed, recorded Right of Entry for Clearing Purposes that allows Applicant to enter the third party's property to complete the clearing. See Exhibit 115. The Board finds that this evidence demonstrates that compliance with sight distance standards is feasible.

Further, although several opponents express concern about the Project generating increased traffic (particularly truck traffic), the Board finds that this testimony was generalized and speculative in nature. It was not presented by an expert, and it did not reasonably call into question the conclusions reached by KAI. Therefore, the Board finds that a reasonable person would rely upon KAI's testimony to conclude that, subject to the above-referenced conditions, the Project will minimize all potential impacts to local roads used for access and egress to the mining site within one mile of the site entrance. The Board further finds that County staff and Washington County staff have proposed conditions of approval. See Staff Report at pages 88-92 (Conditions 21-44). The Board finds that these proposed conditions incorporate KAI's proposed conditions and are reasonable, practicable, and will minimize any traffic conflicts with local roads. Accordingly, the Board imposes these measures as conditions of approval on the Project.

**(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;**

#### IDENTIFICATION OF CONFLICTS:

As specified in OAR chapter 660, division 013, and ORS 836.623, the County is only permitted to regulate water impoundments when they are located within 10,000 feet of a runway outside of an approach corridor and within 40,000 feet of a runway within an approach corridor for an airport with an instrument approach ("Regulatory Zone"). The Property is not located within the Regulatory Zone of any public airports. Thus, the Board finds that the proposed mining use will not cause any safety conflicts with any existing public airports.

## MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified safety conflicts with existing public airports, the Board finds that it is not required to identify measures that would minimize such conflicts.

**(D) Conflicts with Goal 5 resources within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;**

## IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the existence of conflicts with inventoried Goal 5 resources:

- Metro Regional Resources: No conflicts because: (1) there are no such inventoried resources within this area of the County; and (2) such inventoried resources in Washington County are redundant with other inventoried resources that would not be subject to significant conflicts.
- Riparian Corridors: No conflicts because Project would avoid any intrusion into inventoried riparian corridors and would preserve a 100-foot setback to the adjacent Rock Creek Corridor. Further, the Project would not cause dewatering of the Rock Creek Corridor because it is sustained by precipitation, upgradient runoff, and low permeable soils that perch water.
- Federal Wild and Scenic Rivers: No conflicts because no inventoried resources within 20 miles of the Property.
- Oregon Scenic Waterways: No conflicts because no inventoried resources within 10 miles of the Property.
- Oregon Recreation Trails: No conflicts because no inventoried resources located within the Impact Area.
- Natural Areas: No conflicts because no inventoried Natural Areas within the County and because Project would not remove or interfere with the use of Washington County's inventoried Natural Area (Tonquin Scablands).
- Wilderness Areas and Open Space: No conflicts because no inventoried Wilderness Areas within 20 miles and no inventoried Open Space within 1 mile of the Property.
- Scenic Views and Sites: No conflicts with County-inventoried viewpoints on Parrett Mountain because the Project will be indistinguishable from neighboring lands to the north, south, and west due to the distance from the viewpoints and the preservation of the rocky knoll on the west side of the Property. No conflicts

with Washington County-inventoried scenic features because they are located outside the Impact Area and the Project would not interfere with views of these features.

- Wetlands: Conflict with 1.78 acres of on-site wetlands that will be removed and/or filled to allow for mining. Potential conflicts with avoided portions of Wetlands B and C due to their dependence upon upgradient contributing watershed that Project would remove.
- Wildlife Habitat: No conflicts in the County because no inventoried wildlife habitat resources. Potential conflicts with Washington County-inventoried resources due to noise and vibration disturbances, which would redirect wildlife movement around the Property.

As support for these conclusions, the Board relies upon the analysis of the scientists at TSI, who conducted an analysis of potential conflicts between the Project and inventoried Goal 5 resources. See "Goal 5 and Natural Resource Assessment Report for the Proposed Tonquin Quarry Project," by TSI dated April 2013 at Appendix E of the Applications. In that report, TSI reached each of the conclusions adopted by the Board as findings above. *Id.* The Board finds TSI's testimony to be particularly credible due to the site-specific nature of TSI's observations, TSI's knowledge of the Project, TSI's scientific training, and TSI's experience conducting natural resource assessments. See TSI Resumes at Appendix N of the Applications.

Further, the Board finds that opponents' contentions to the contrary do not undermine TSI's testimony. The Board adopts specific findings as to each of these contentions below.

## **REPLENISHMENT OF OFFSITE WETLAND HYDROLOGY**

Although Ms. Madden, Mr. Leyda, and others contend that Applicant's proposal to replenish hydrology to the retained portions of Wetlands B and C is not feasible and thus, there is a significant conflict between the Project and those retained wetlands, the Board denies this contention. The Board finds that Applicant's proposed wetland replenishment system is both technically feasible and will mitigate adverse impacts to wetland hydrology caused by removing portions of Wetlands B and C. As support for this conclusion, the Board relies upon testimony from Applicant's civil engineer and Applicant's natural resources scientists. First, Applicant's civil engineer, Westlake, submitted a detailed description and depiction of the proposed infiltration system, together with calculations of the amount of basin that was impacted and the amount of replenishment water that would need to be provided. See Westlake Memorandum re: "Wetland stormwater replenishment" dated September 24, 2013 (Exhibit 65f). Westlake's memorandum further explains that providing clean water to wetlands is a common practice and subject to stringent requirements from federal, state, and local agencies. *Id.* Bernard Smith, Project civil engineer, also stated that he had obtained 25 such permits. *Id.* In reaching its conclusion that the system is feasible, the Board also

relies upon testimony from Applicant's natural resource scientists, TSI, which explained how the system would mimic existing conditions by delivering subsurface water and would not result in untoward impacts to the retained wetlands. See TSI Letters dated October 29, 2013 (Exhibit 98) and November 8, 2013 (Exhibit 141). The Board also relies upon Applicant's proposal to install a clay barrier between the excavation area and the buffer for the preserved wetland in order to prohibit water intrusion from the wetlands "backflowing" into the excavation boundary, which TSI has opined will be effective for this purpose. See TSI Letter dated November 4, 2013 (Exhibit 119). The Board finds the testimony from TSI and Westlake to be compelling both in its detail and in its site-specific nature. Finally, the Board relies upon Conditions 59-64, including 62a, to ensure that Applicant will appropriately replenish offsite wetland hydrology.

Further, the Board finds that opponents failed to undermine the testimony presented by Westlake and TSI regarding the wetland replenishment system. Although Mr. Leyda, the Refuge, and ODFW all contend that the proposed replenishment system would not adequately mimic natural recharge because there has been inadequate modeling and because the system will not account for variations in rainfall intensity, the Board finds that the opponents are mistaken. The Board finds that Westlake utilized an appropriate hydrology model that calculated both the amount of each wetland basin that was lost by wetland removal and the average amount of precipitation during the local rainy season to predict the expected water necessary to sustain the subject wetlands. See Westlake Memorandum re: "Wetland stormwater replenishment" dated September 24, 2013 (Exhibit 65f). Based upon its modeling, Westlake concluded that the Project would need to pump 0.1 cfs water on a continuous basis from November to May to provide the water volume lost by removing the watershed upgradient of the impacted Wetlands B and C. *Id.* No one specifically challenged Westlake's methodology. In denying the opponents' contention on this issue, the Board also relies upon the following testimony from TSI explaining how the infiltration system emulates existing conditions:

"This approach provides a consistent subsurface base flow that replenishes the avoided and offsite wetlands. This type of infiltration system mimics the way these wetlands are naturally sustained - water is delivered via subsurface flow, because pre-quarry conditions do not have measurable amounts of runoff. Thus, the offsite wetlands would continue to have water levels that naturally rise and fall in response to periods of unusually high or low rainfall, because they would still receive water inputs in the form of direct rainfall and subsurface recharge from adjacent, offsite slopes. And as an added precaution, a network of shallow observation tubes would be established along the fringes of each avoided wetland to provide regular feedback on the water levels (fluctuations, duration, etc.) to inform the quarry operator if any adjustments are needed to properly sustain the wetlands."

See TSI Letter dated October 29, 2013 at 6 (Exhibit 98). Based upon the testimony from Westlake and TSI, the Board finds that Applicant has refuted opponents'

contention that Applicant has not completed adequate modeling and has not accounted for variations in rainfall in developing the wetland replenishment system.

Although Mr. Leyda further contends that the proposed wetland infiltration system will deliver impaired water to the remaining portions of Wetlands B and C, potentially causing scouring of wetlands, allowing sediment to enter wetlands, and/or creating increased turbidity, the Board denies this contention because Applicant's proposed infiltration system will be similar to pre-mining conditions where precipitation infiltrates the ground, then moves vertically to a naturally confining layer (claypan, bedrock), then flows subsurface toward each wetland. As support for this conclusion, the Board relies upon testimony from TSI explaining that the replenishment system functions in this manner. *Id.* The Board also relies upon TSI's expert opinion that the replenishment water would be substantially cleaner than urban stormwater and that there would be no opportunity for scouring, sediments, or turbidity because the water would be delivered subsurface. *Id.* The Board finds that, although Mr. Leyda submitted supplemental testimony after this TSI Letter, Mr. Leyda's supplemental testimony did not offer any surrebuttal on the water quality issue. See Leyda Letter dated November 8, 2013 (Exhibit 134). Further, the Board finds that Mr. Leyda's initial testimony on the water quality issue was general in nature and grounded in literature, not a specific examination of the proposed system in context. See Leyda Letter dated September 23, 2013 (Exhibit 57). Accordingly, the Board finds that TSI's detailed and site-specific testimony is more reliable on this issue.

On similar grounds, the Board denies contentions by Mr. Leyda and Ms. Madden that the replenishment system will result in an increase in invasive weeds or changed plant diversity. TSI testified that one advantage of the system was its ability to trap invasive weed seeds and prevent them from flowing into the retained wetlands. See TSI Letter dated November 8, 2013 (Exhibit 141).

Although Mr. Jenkins contends that the wetland replenishment system is also defective because it does not replace groundwater flow to the retained wetlands, the Board finds that there is considerable testimony in the record from Applicant and the Refuge that the wetlands are primarily fed by precipitation, not groundwater. See Holmes Letter dated September 23, 2013 (Exhibit 57); TSI Letter dated October 29, 2013 (Exhibit 98); and Shannon & Wilson Letter dated November 8, 2013 (Exhibit 140). The Board finds this testimony more reliable than Mr. Jenkins' testimony for two reasons. First, the Board finds that the testimony that the wetlands are fed by precipitation was made by three independent parties, one of whom is opposed to the Project. Second, the Board finds that Shannon & Wilson has not simply asserted this point but has explained why Mr. Jenkins is incorrect: Topographic maps indicate that the wetlands are surficial ponds in closed basins atop the basalt. See Shannon & Wilson Revised Hydrogeologic Report (Exhibit 92). As such, the Board finds that these wetlands are isolated from and not connected with water-bearing zones that are connected to regional groundwater supplies. *Id.* Mr. Jenkins made a subsequent written submittal into the record in which he restated his point; however, he did not offer any additional response to Shannon & Wilson's point regarding water elevations. See Jenkins Letter dated November 8, 2013

(Exhibit 134). As such, the Board finds that Mr. Jenkins did not adequately rebut Shannon & Wilson's testimony. Therefore, the Board denies Mr. Jenkins' contention on this issue.

Further, although Mr. Jenkins contends that Applicant has not demonstrated that the proposed clay barrier component of the replenishment system is feasible because Applicant has not provided any design or analysis to support the concept, the Board finds that Mr. Jenkins is incorrect. In fact, Applicant has provided a detailed drawing of the proposed clay barrier. See Westlake Exhibit attached to TSI Letter dated November 4, 2013 (Exhibit 119). That letter also includes a detailed description of the purpose and composition of the clay barrier, as well as TSI's opinion that the clay barrier will be effective:

"Although both wetlands [B and C] naturally slope away from the excavated quarry, the clay barrier would serve to prevent wetland water from seeping toward the pit \* \* \* The barrier, shown on the attached figure from Westlake Consultants, would be constructed by excavating a 3- to 4-foot wide trench to the depth of the underlying bedrock or an existing clay layer atop of the bedrock. The trench would be backfilled with a 15 percent bentonite clay/85 percent soil mixture, or other water barrier system. The barrier would rise at least 6 inches above the elevation of the adjacent wetland, then it would be capped with either road construction materials or topsoil. When complete, the barrier would prevent both replenishment water and wetland water from 'backflowing' toward the quarry area."

*Id.* at 1. Based upon this evidence, the Board finds that Mr. Jenkins' contention misconstrues the record. Therefore, the Board denies Mr. Jenkins' contention.

Although Mr. Jenkins and Mr. Leyda contend that there is no evidence that the replenishment system will remain in place and effective through and after site reclamation, the Board finds that Mr. Jenkins is incorrect. The Board finds that Applicant has proposed to rebuild the contributing watershed to the avoided portions of Wetlands B and C once mining is complete in order "to provide a permanent water source for the wetlands in perpetuity." See TSI Letter dated October 29, 2013 at 1-2 (Exhibit 98). The Board has relied upon the Applicant's representations to that effect in making its finding. The Board's approval of the Applications necessarily requires compliance with all representations made by Applicant in this proceeding. See *Perry v. Yamhill County*, 26 Or LUBA 73, 87-88, *aff'd* 125 Or App 588, 865 P2d 1344 (1993). Further, the Board finds that the language of the applicable conditions quoted below (Conditions 59, 60, and 61) does not limit the duration of Applicant's obligation to provide replenishment water. As a result, it is reasonable to conclude that the obligation extends through reclamation. Therefore, the Board does not find Mr. Jenkins' and Mr. Leyda's contentions on this issue persuasive.

Finally, although opponents contend that the adverse effects to the retained wetlands will include ancillary adverse effects to habitat or wildlife, the Board denies these contentions because, based upon the substantial evidence cited above, there will be no adverse impacts to offsite wetland hydrology and thus, no ancillary adverse effects to habitat or wildlife.

## **IMPACTS TO ROCK CREEK**

Although Ms. Madden, Mr. Jenkins, and Mr. Leyda contend that development of the Project will constitute a significant conflict with the Rock Creek riparian corridor, the Board denies this contention for three reasons. First, Applicant will retain the required 70-foot buffer along Rock Creek. See TSI Goal 5 report set forth at Appendix E of the Applications. Second, the Board finds that Rock Creek is primarily fed by runoff and groundwater flow from the east by northeastern flank of Parrett Mountain. See TSI Letter dated November 8, 2013 (Exhibit 141). By contrast, the Property and its vicinity primarily drain to the east toward Coffee Lake Creek. *Id.* The Board finds that only approximately 15 acres of the Property drains to Rock Creek, and only 10.7 of those acres would be excavated by the Project, which is a very small percentage of the total Rock Creek watershed. *Id.*

Third, the Board finds that the Project will not dewater Rock Creek. As support for this conclusion, the Board relies upon expert testimony from the Project hydrogeologist that Project impacts to Water-Bearing Zones #2 and #3 will not impact Rock Creek or its associated Wetland D because these Water-Bearing Zones are not connected with Rock Creek or Wetland D due to differences in elevation. See Shannon & Wilson Rebuttal Memorandum dated November 4, 2013 (Exhibit 118). Although Mr. Leyda contends that the loss of portions of Wetlands B and C will adversely affect Rock Creek because these wetlands are hydraulically connected with the creek, the Board finds that no significant relationship exists between these wetlands and Rock Creek. As support for its conclusion, the Board relies upon testimony from Shannon & Wilson that Wetlands B and C are not hydraulically linked to Rock Creek because they are located at different elevations:

“This one location extends across the elevation boundary for Rock Creek (about +150 feet msl) and has been identified as Wetland D. This one location represents the only identified wetland that is directly associated with the Rock Creek wetlands complex due to its matching elevation and association with the scour channel fill. Otherwise, in our opinion, no wetlands associated with Rock Creek or Coffee Lake Creek/Seely Ditch have a significant hydrogeologic relationship with, nor the potential for adverse impacts associated with the Tonquin Holdings LLC quarry proposal.”

See Shannon & Wilson Revised Hydrogeologic Evaluation at 32 (Exhibit 92) and Shannon & Wilson Rebuttal Memorandum dated November 4, 2013 (Exhibit 118). The Board finds that although opponents reiterated their contention in later submittals, they

did not offer any meaningful rebuttal of the points made by Shannon & Wilson. Therefore, the Board denies the opponents' contentions on this issue.

## **WILDLIFE CORRIDOR**

Although opponents contend that the Project will create a significant, unminimized conflict by disrupting a wildlife corridor, the Board denies this contention for three reasons. First, the Board finds that this subsection is concerned with conflicts with Goal 5 inventoried resources, and neither the County nor Washington County has designated an area-wide wildlife corridor as an inventoried resource. For this reason alone, the Board finds that there is no merit to the opponents' contention.

Second, the Board finds that the Project does not create a conflict with Washington County-designated habitat due to disruption of a wildlife corridor. As support for this conclusion, the Board relies upon the testimony of scientist Phil Scoles, who concluded that development of the quarry "would not create a constriction [in the wildlife corridor] that adversely affects wildlife." See TSI Letter dated October 29, 2013 (Exhibit 98). Mr. Scoles reached his conclusion after examining the entire context of the corridor, which begins well north of the Property near the Tualatin River and then continues south to the Willamette River. See map attached to TSI Letter dated October 29, 2013 (Exhibit 98). As the map depicts, the corridor varies in width from approximately 3100 feet in width to as few as 75 feet in width. *Id.* Mr. Scoles calculated that, even with development of the quarry, the corridor would be approximately 1600 feet wide, much larger than other areas of constriction, and still sufficient to allow animals to feed, pair, and nest, in part due to the additional buffers installed around the mining area. *Id.* The Board finds that Ms. Madden and Mr. Leyda did not present an alternative map depicting wildlife movement in the area that contradicted Mr. Scoles' testimony. For that matter, Mr. Leyda did not directly rebut Mr. Scoles' October 29, 2013 testimony regarding the wildlife corridor at all.

Third, and in the alternative, the Board finds that the Project will create a significant conflict with Washington County designated habitat resources, but the conflict is minimized for the reasons explained below under the heading "Measures to Minimize Conflicts."

## **NOISE IMPACTS TO WILDLIFE**

Although opponents contend that noise generated by the Project will create a significant conflict with the Refuge and off-site habitat areas, the Board denies this contention for the reasons explained below.

First, although Mr. Leyda and Ms. Madden contend that Applicant erred in relying upon median noise levels and human-weighted units (dBA) rather than considering impacts from loud noises that are short in duration, the Board denies this contention for two reasons. First, the Board finds that the study relied upon by Mr. Leyda (Francis and Barber, 2013) gave very little information about the noise levels that were studied. See

DSA Memorandum dated November 8, 2013 (Exhibit 98). As such, the Board finds that this study is of little value for the assertion offered by Mr. Leyda. Second, the Board finds that the opponents' contention is misplaced because the types of noises typically generated by the Project will be more in the nature of steady sounds that last for a longer period of time rather than the short, sudden noises opponents are concerned about. *Id.* Therefore, the Board finds that there is little value in attempting to model such short, sudden noises and no identified basis to mitigate for same.

Additionally, although Mr. Leyda and Ms. Madden contend that a portion of the Refuge is located within the "noise compliance boundary" in DSA's report, indicating that noise levels within that boundary may exceed DEQ levels, the Board finds that this fact does not support the opponents' position for four reasons. First, the Board finds that, once the noise conflict minimization measures outlined in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A) are implemented, the noise compliance boundary extends only a few feet onto the Refuge. See Figure #8 of DSA Revised Noise Study (Exhibit 65c). As such, the vast majority of the Refuge is unaffected.

Second, the Board finds that no particular noise compliance standards are applicable to the Refuge or to wildlife in general because neither is a "noise sensitive use" under the DEQ standards or a "noise sensitive unit" under the County's noise ordinance (County Code 6.05.020). As support for this conclusion, the Board relies upon the analysis of the applicable DEQ and County definitions made by DSA. See DSA Memorandum dated November 8, 2013 (Exhibit 142). Opponents did not present evidence that either of these provisions would be applicable. Additionally, opponents did not identify any other authority that might establish noise standards that are applicable to the Refuge or to wildlife in general and yet would be violated by the Project.

Third, the Board finds that DSA drew the boundary in a very conservative location because it is the L50 standard, or the location where the noise level would be exceeded 50% of the time over the course of an hour. *Id.* In other words, the Board finds that Project noise will not typically reach these levels for this extended a period of time.

Finally, the Board finds that DSA's ambient noise measurements at the Refuge in existing conditions were as high as 52dBA, only 3 dBA below the DEQ standard, if it applied. *Id.* This measurement indicates that the Refuge is already experiencing quite noisy conditions. For these reasons, the Board denies the opponents' contention regarding the DEQ noise compliance boundary.

Further, although Mr. Leyda, Ms. Madden, and Ms. Holmes contend that even though the area is already noisy, development of the Project may nevertheless cause adverse effects to wildlife, including limiting foraging, pairing success, or number of offspring, the Board denies this contention because it is not supported by substantial evidence in the whole record. Instead, the Board adopts and relies upon the testimony of TSI, who concluded that the Project would have no such ill effects:

“According to the project acoustical engineer (Daly-Standlee & Associates, April 2013), the proposed sound mitigations employed by the Tonquin quarry would not increase ambient noise. The wildlife utilizing the Tonquin quarry site and adjacent lands are defacto [sic] evidence that these species are acclimated to these regular and frequent noises. This is consistent with a Corps of Engineers study on an endangered woodpecker near Savannah, GA that found that nearby artillery blasts at a military installation did not affect the nesting success or productivity of that species. [Footnote omitted.] Similarly, a U.S. Forest Service technical paper in 1998 reported that logging truck noise did not evoke any response of northern goshawks. [Footnote omitted.] Based upon this research, quarry related noise would not significantly change existing conditions and associated effects on wildlife, nor their behavior that facilitates plant propagation.”

TSI Letter dated October 29, 2013 at 5 (Exhibit 98). The Board finds this testimony compelling because it considers existing conditions, how those conditions will be affected by development of the Project, and then offers an expert prediction based upon case studies. Although opponents cite general studies to the contrary, the Board finds the opponents’ testimony less reliable because it does not apply those studies in context the way TSI has. Therefore, the Board denies the opponents’ contentions on this issue.

#### **UNLAWFUL “TAKE” OF WILDLIFE**

Although Ms. Madden and Mr. Leyda contend that development of the Project will result in an unlawful “take” of red-legged frog and Western pond turtles, the Board denies this contention for three reasons. First, the Board finds that OAR 635-044-0130(1)—which prohibits the “take” of any protected wildlife—is not an approval criterion applicable to the Applications because no provision of law (the “take” rule, the Goal 5 rule, statute, local code, or case law) states as much. Second, and likewise, the Board finds that the County lacks the authority to enforce “take” rules in this context because, again, no provision of law grants this authority. On these two points, the Board finds it notable that although a representative of the Oregon Department of Fish and Wildlife—the agency that adopted and administers the “take” rule—testified in opposition to the Applications, she did not assert that the Project would cause a “take” of any wildlife.

Third, the Board finds that, even if the “take” rule applied, a reasonable person would not conclude, based upon the evidence in the whole record, that development of the Project would actually result in a “take.” In fact, as noted by TSI, the Property does not contain any habitat likely utilized by Western pond turtles. See TSI Letter dated November 4, 2013 (Exhibit 119). See also Letter from Oregon Department of Fish and Wildlife dated September 16, 2013 (Exhibit 32) (noting the existence of turtle habitat off-site but not noting any on-site). Although Mr. Leyda disputed this contention, the Board denies Mr. Leyda’s contention because, unlike TSI, Mr. Leyda has not conducted an on-site survey of the Property. Further, although Mr. Leyda noted that other Western pond

turtles have been observed in the vicinity, none of the observations occurred on the Property, and at least one sighting was to the south of the Property, where TSI agreed that turtle habitat existed. *Id.*

Furthermore, although the Property contains assumed red-legged frog habitat, the Board finds that it is unlikely that clearing/mining will cause a “take” of any of these frogs for two reasons. *Id.* First, the Board finds that Applicant has agreed not to initiate wetland impacts when there is standing water in the wetlands, thus avoiding impacts to frogs in their most vulnerable egg and tadpole stages (when they are still in water). *Id.* Second, Applicant’s proposed plan to clear in swaths that progressively approach the outer edge of wetlands will provide sufficient warning to frogs to allow them to relocate away from the Property. *Id.* Although Mr. Leyda submitted a supplemental response to this TSI letter, Mr. Leyda’s response did not address TSI’s contentions regarding the red-legged frog in any new or different way. See Leyda Letter dated November 8, 2013 (Exhibit 135). Therefore, the Board finds that opponents have not undermined TSI’s testimony that the Project will not result in a “take” of any wildlife.

## **GEOLOGIC FEATURES**

Although several opponents expressed concern about impacts to the Tonquin Scablands geologic features, the Board denies these contentions for two reasons. First, the County has not designated that portion of the Tonquin Scablands within the County as an inventoried Goal 5 resource. Therefore, impacts to these features are not relevant to the conflicts analysis under this subsection of the rule. Second, although Washington County has designated a portion of the Tonquin Scablands as an inventoried Goal 5 resource, the Board finds that the Project will not create a conflict with this resource because the Project will not remove or interfere with use of the Tonquin Scablands in Washington County. As support for this conclusion, the Board relies upon the expert testimony of TSI. See “Goal 5 Natural Resource Assessment Report for the Proposed Tonquin Quarry Project” prepared by TSI in Appendix E of the Applications. Opponents have not presented evidence to undermine this testimony. Therefore, the Board finds there is no basis to grant the opponents’ contention on this issue.

## **INVENTORY OF THREATENED AND ENDANGERED SPECIES**

Although the Oregon Department of Fish and Wildlife (“ODFW”) contended that additional habitat analyses are necessary before the Project can be approved, the Board finds that there is no basis under the applicable approval criteria to require additional habitat analyses on lands that are not Goal 5 inventoried resources. Therefore, the Board denies ODFW’s contention.

The Board further finds that, in conjunction with completing its Goal 5 resources analysis, TSI completed a comprehensive assessment of the Property for a variety of threatened and endangered species, including those listed by the County, state agencies, federal agencies, and the Refuge as occurring within two miles of the

Property. *Id.* As reported by TSI, the Property does not appear to support any of these species. *Id.* The Board finds the opponents' statements suggesting the possibility that other species could be present to be speculative. Further, the Board finds that TSI's sensitive species assessment methodology, which included review of literature, interviews with other biologists, and multiple site visits, was reasonable. *Id.* Although ODFW contends that TSI's species assessment methodology did not meet industry standards, ODFW did not explain this contention with any specificity. See ODFW Letter dated September 16, 2013 (Exhibit 32). As a result, the Board finds that this contention is inadequately developed to allow Applicant to respond in a more specific way than what is in the record, and thus, this contention does not provide a basis to deny or further condition the Applications.

### **HEAVY METALS AND ACID RUNOFF**

Although Mr. Leyda contends that surface mining would expose rock having damaging quantities of acidity and metals, the Board finds that the chemistry of basalt rock does not result in acid runoff. As support for this conclusion, the Board relies upon TSI's testimony to this effect, including the scientific literature cited therein. See TSI Letter dated October 29, 2013 (Exhibit 98). The Board further finds that because basalt does not result in acid runoff, there is no basis to conclude that wetland replenishment water, which will come into contact with basalt, will release metals and lower the pH of offsite wetland waters or impact wetland wildlife. *Id.* Mr. Leyda did not dispute TSI's testimony on this issue. Therefore, the Board denies Mr. Leyda's contention on this issue.

### **CONFLICTS WITH OTHER AGGREGATE RESOURCE SITES**

Additionally, the Board finds that there will be no significant conflicts between the Project and the three inventoried aggregate sites within the Impact Area. As support for this conclusion, the Board relies upon the analysis of Dorian Kuper of Kuper Consulting LLC, who concluded that there would be no such conflicts between these uses due to the similarity in their operations. See Kuper Letter dated June 3, 2013 set forth in Appendix M of the Applications. The Board finds that Ms. Kuper's analysis is particularly credible in light of her extensive experience as a geologist (over 30 years) and her knowledge of aggregate operations in the vicinity. See D. Kuper Resume set forth in Appendix N of the Applications. The Board finds persuasive that no one, including adjacent and nearby quarry operators, rebutted or called into question Ms. Kuper's testimony on this issue. Therefore, the Board finds that a reasonable person would rely upon Ms. Kuper's testimony to find no significant conflicts. See *Sanders v. Yamhill County*, 34 Or LUBA 69, 107 (1998) ("In the absence of any cited evidence to the contrary, we accept as reasonable the county's conclusion that mineral and aggregate uses and geothermal uses have similar impacts and conflicts.").

### **OPPONENTS' ADDITIONAL CONTENTIONS**

Although opponents raised concerns about other environmental impacts, including impacts to neotropical migrating birds and impacts to Metro-designated "habitat of

concern," the Board denies these contentions because the County is only permitted to consider "[c]onflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated." OAR 660-023-0180(5)(b)(D). Opponents have not established that the identified resources are inventoried Goal 5 resources, and the Board finds that they are not.

The Board finds that opponents raised a series of other contentions pertaining to Goal 5 resources. The Board finds that these contentions lack merit, are speculative, and fail to account for the considerable conflict minimization measures that the Project will include. Further, the Board finds that Applicant has adequately rebutted these contentions. In support of these findings, the Board adopts and incorporates by reference TSI's Goal 5 assessment set forth in Appendix E of the Applications and the findings and conclusions in TSI's letters dated September 24, 2013 (Exhibit 65e); October 29, 2013 (Exhibit 98); November 4, 2013 (Exhibit 119); and November 8, 2013 (Exhibit 141).

#### MEASURES TO MINIMIZE CONFLICTS:

For inventoried Metro Regional resources, riparian corridors, federal wild and scenic rivers, Oregon scenic waterways, Oregon recreation trails, natural areas, wilderness areas, open space, scenic views and sites, and aggregate sites, the Board finds, based upon the sources cited above, that no conflict exists. As a result, the Board finds that no measures are needed to minimize conflicts with these resources.

For the Washington County-inventoried wildlife habitat, the Board finds that the conflict is minimized to a level that is not significant through compliance with the following measures:

- 50-foot setbacks from the remainders of Wetlands B and C to preserve existing wetlands and uplands
- 100-foot minimum setback from Rock Creek and the land immediately east of the Kramer property to preserve existing upland
- 25-foot setback along the west by northwest and north by northeast Property lines to include fence and landscape screening
- 50-foot setback along the south Property line to include noise barrier and landscape screening
- 50-foot setback along the east Property line
- Implementation of erosion control methods where landscaping must be removed
- Irrigation of plantings to promote rapid growth and reduce summer drought stress

- Time-sensitive measures such as limitations on general hours of operation and blasting frequency
- Regular use of dust control sprayers on equipment and on-site roadways and use areas

As support for this conclusion, the Board relies upon TSI's testimony that these measures will minimize the identified conflict. See TSI's Goal 5 assessment set forth in Appendix E of the Applications. The Board finds that the Project operating plan, as conditioned, incorporates all such measures.

For the avoided wetlands, the Board finds that the conflict is minimized to a level that is not significant through compliance with the following measures, which the Board imposes as conditions of approval on the Project:

"59. The applicant and/or operator shall not fill, excavate or otherwise disturb wetlands on the property until applicant first obtains appropriate permits from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps) and implements any required pre-disturbance mitigation measures. The applicant shall provide County Planning and/or WES/SWMAAC with copies of any annual monitoring reports required by DSL and/or Corps."

"60. Within 90 days after commencement of site construction, the quarry operator shall provide the Tualatin River National Wildlife Refuge and Clackamas County with calculations showing planned reductions in contributing upland watershed that will result in measurable declines in surface water flowing towards the Refuge. In compliance with WES/SWMAAC standards, the proposed operation shall provide replenishment water for wetlands to maintain the average rainfall contribution during the rainy season (November-May). Subject to participation by the Refuge, Department of State Lands and other applicable agencies, surface water flows to the Refuge may be enhanced (increased)."

"61. The Quarry operator shall monitor annual water levels within the undisturbed buffer areas to the offsite portions of Wetlands B and C, and take appropriate actions to maintain pre-disturbance wetness in those wetlands. The operator may install distribution systems (infiltration trenches, drip lines, etc.) for the replenishment water in the undisturbed buffer where such installation results in removal of no more than 15% of the native trees and shrubs located in such buffers as of June 1, 2013."

"62a. The applicant/operator shall install a clay barrier between the excavation area and buffer for the preserved portions of Wetlands B and

C. Said clay barrier shall be compacted to prohibit water intrusion from Wetlands B and C into the excavation boundary.”

“62. The operator shall not excavate within the boundaries, as determined by DSL, of any onsite portion of Wetland B or C when there is surface water in the onsite portion of such wetland area.”

“63. The operator shall install and maintain an elevated area (above existing grade) of approximately 20 feet in width between the excavation boundary and the south edge of the proposed 50 foot buffer to the offsite portion of Wetland B (found in the northwest corner of the subject property). This elevated area is to be located outside of the excavation boundary, but can be occupied by an access road, stormwater facilities, or other activities ancillary to those occurring within the excavation boundary.”

“64. The operator shall maintain the approximate same condition of the undisturbed buffers as exist on the effective date of Clackamas County land use approval to facilitate wildlife movement and protect adjacent wetland functions. The undisturbed buffers are located immediately east and north of the Kramer parcel, adjacent to Rock Creek and the 50 foot buffer where Wetland B extends offsite to the north. Such maintenance shall include, but is not limited to, control of increased Himalayan blackberry and reed canarygrass growth, replacement of dead trees (>12 in. DBH) when more than 10 percent have died, and related vegetative management.”

As support for this conclusion, the Board relies on TSI’s testimony that these measures would minimize the identified conflict. *Id.* Although Ms. Holmes contends that Condition 61 does not capture the biological diversity and uniqueness of the area because it establishes a single date (June 1, 2013) for determining site conditions, rather than a range of dates, the Board denies this contention. The Board finds that the purpose of the condition is to establish a single baseline that is roughly the date Applicant filed the Applications with the County. Selecting a range of dates would be inconsistent with this purpose.

Although Ms. Madden, Mr. Leyda, Ms. Ruther, and Ms. Holmes contend that the proposed buffers around the retained wetlands should be 100 feet in width to provide adequate protection for these resources, the Board denies this contention for three reasons. First, the Board finds that, in several cases, the buffer provided is 100 feet. For example, the buffer for the retained portion of Wetland C is 100 feet (50 feet of wetland buffer, 50 feet of upland buffer), and the buffer for Wetland D, which is upland forest, is more than 100 feet. See TSI Letter dated October 29, 2013 (Exhibit 98). Second, the Board finds that although the buffer along the retained portion of Wetland B is only 50 feet, this width meets the standard required by the County for wetlands in urban and rural areas; e.g. SWMACC service area. *Id.* Third, the Board finds that

Applicant has agreed to carefully maintain the buffers to prevent encroachment into any buffers. *Id.* Finally, although Ms. Madden contends that the buffer along Wetland C should be wider because the area is steeply sloped, the Board finds that the area has slopes less than 25%; therefore, the buffer satisfies SWMACC standards. See Appendix B of the Applications.

For the 1.78 acres of wetlands that would be removed/filled, the Board finds that there are no measures to minimize the identified conflict with these resources. As support for this conclusion, the Board relies upon TSI's conclusion to this effect:

"The quarry would remove and/or fill approximately 1.78 acres of on-site wetlands. Although the quarry would comply with all state and federal removal/fill permitting requirements, including implementing all required mitigation measures, the total loss of 1.78 acres of onsite wetlands would constitute a conflict that cannot be minimized for Goal 5 purposes. Thus, the applicant is submitting an analysis of the positive and negative ESEE consequences resulting from a decision to allow, limit, or prohibit the quarry under the circumstances."

*Id.* at iv. For the reasons set forth above and discussed in detail in TSI's Goal 5 Report and supplemental letters, the Board finds that, with the exception of the conflict with 1.78 acres of wetlands, there are measures that will minimize identified conflicts to a level that is not significant, and the Board has conditioned its approval to incorporate such measures. The Board's analysis of the positive and negative economic, social, environmental, and energy consequences resulting from a decision to allow, limit, or prohibit the Project is set forth below.

#### **(E) Conflicts with agricultural practices; and**

##### IDENTIFICATION OF CONFLICTS:

The Board finds that the Project will not generate any significant conflicts with agricultural practices on surrounding lands. As support for this conclusion, the Board relies upon the results of Applicant's agricultural survey. See Appendix J of the Applications. The Board finds that Applicant's survey identified 28 parcels (some under the same ownership or operation) with low-intensive, small-scale agricultural activities (limited to livestock grazing, raising chickens, and growing clover, fruit, and Christmas trees), within one mile of the Property. *Id.* As depicted on the map attached to the survey, the concentration of agricultural practices in the survey area is between 0.5 and 1.0 miles from the Property. *Id.* Moreover, the Board finds that the survey results reflect that agricultural practices are occurring on only one property that abuts the Property. *Id.* In short, the Board finds that only isolated, small-scale agricultural practices are occurring on surrounding lands.

Further, as explained above, the Board finds, based upon the testimony of various Project consultants, and subject to adoption and implementation of various minimization

measures, there will be no significant conflicts between the Project and allowable uses, including farm uses, within the Impact Area.

The Board finds that, due to the limited nature and small scale of existing agricultural practices, the relative lack of proximity to the mining operation, and the various measures that will minimize Project conflicts to a level that is insignificant, the Project will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Therefore, there will be no conflicts between the Project and agricultural practices.

As additional support for its conclusion, the Board finds that County Planning staff concurred with Applicant's testimony on this issue. See Staff Report at 49-50.

Although Vicki Norris testified that she lives approximately one-half mile away and raises chickens, operates a mobile fruit stand, and a small orchard, and that she is concerned that the Project will degrade the groundwater, light, and air, the Board finds that Ms. Norris' testimony was vague, not supported by any specific evidence, and did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on her property. For that matter, the Board finds that no opponents presented any meaningful rebuttal to the findings set forth in the agricultural survey. To the contrary, the Board finds that Narendra Varma testified that he operates a farm approximately one mile from the Project, which is in the vicinity of the existing active quarry operations, and he intends to expand his operations and hire 6-11 additional employees over the next three years. See Email from Narendra Varma dated November 8, 2013 (Exhibit 136).

Therefore, the Board finds that a reasonable person would rely upon the agricultural survey, the staff concurrence, and Mr. Varma's testimony to support the conclusion that the Project will not generate any significant conflicts with agricultural practices on surrounding lands.

#### MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified conflicts with agricultural practices, the Board finds that it is not required to identify measures that would minimize such conflicts.

**(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;**

The Board finds that there are no other conflicts for which consideration is necessary because the County does not have any ordinances that supersede DOGAMI regulations pursuant to ORS 517.780.

**(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized.**

**Based on these conflicts only, local governments shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:**

- (A) The degree of adverse effect on existing land uses within the impact area;**
- (B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and**
- (C) The probable duration of the mining operation and the proposed post-mining use of the site.**

For the reasons explained in response to subsections (3) and (4) above, the proposed conditions of approval will minimize all identified conflicts, with the exception of conflicts to 1.78 acres of significant acknowledged Goal 5 wetlands located on the site. Therefore, the Board finds that it is required to conduct an analysis of the ESEE consequences of the mine that is limited to assessing this significant conflict.

Based upon this conflict only, the Board finds that the ESEE consequences of allowing, not allowing, or limiting the mine are as follows:

**Economic:**

Allowing Mine: The Board finds that the economic consequences of allowing the mine are myriad and positive. For example, Project operations will provide direct economic impacts by creating jobs and generating ad valorem tax revenue. As support for this conclusion, the Board relies upon Applicant's testimony that the Project will employ 10-15 full-time employees with an average annual compensation of \$60,000 (and total employee income between \$600,000 and \$900,000) and generate ad valorem tax revenue exceeding \$140,000 (plus potential rollback taxes to remove the Property from deferral). See Applicant letter re: "Discussion of Economic Benefits" dated November 4, 2013 (Exhibit 113). Although Mr. Varma contends that the Property would generate more ad valorem tax revenue as a rural residential subdivision rather than as a mine, the Board denies this contention because Mr. Varma has not presented any evidence that it is feasible to develop the Property in this manner. Instead, the Board finds that the shallow rock bed and wetlands on the Property might preclude establishing septic systems for homes in this location. *Id.* Mr. Varma had the opportunity to rebut this contention but did not do so.

The Board further finds that preparation for Project operations will also provide significant economic benefits, such as payment of permitting fees, wetland mitigation credits, and consultant and material fees associated with the proposed local roadway improvements. As support for this conclusion, the Board relies upon Applicant's testimony that the Project will pay permit fees and system development charges in excess of \$100,000; will pay wetland mitigation fees in excess of \$127,000; and will

construct public improvements exceeding \$250,000. *Id.* The Board finds that all of these economic impacts will, in turn, have a multiplier effect, as the revenue generated is passed on to third parties who then spend or invest it in the regional economy. *Id.* Although Mr. Varma contends that the Project will not have a multiplier effect because it will not attract any supporting businesses, the Board denies this contention because it takes too narrow a view of the economic impacts of the Project. As stated above, properly construed, the economic impacts of the Project are multi-faceted and not limited to whether additional businesses are generated.

Finally, the economic consequences of allowing a mine on the Property also provide cost-savings because the Property is proximate to the cities of Sherwood, Tualatin, Wilsonville, as well as to major transportation facilities, resulting in lower transportation and delivery costs, and in turn, lower costs for end users of the aggregate product. As support for this conclusion, the Board accepts Applicant's testimony that, compared to the Project, a proposed site in Molalla requiring 250 truck trips would generate an additional 3,750 miles in haul distance, add 83 hours of travel time, use an additional 469 gallons of fuel, and add approximately \$15,000 to the project cost. *Id.* No one presented substantial evidence that undermined this testimony.

Although Mr. Varma, Mr. Jacobs, and Ms. Madden contend that there is no demonstrated public need for aggregate from the Project because a nearby quarry, Tigard Sand & Gravel, has sufficient unmined aggregate supply to serve the market for many years, the Board denies this contention for four reasons. First, the Board finds that the neither the Goal 5 rule nor any other standard affirmatively requires that Applicant demonstrate a public need for the Project.

Second, to the extent that public need is relevant to completing the ESEE, the Board finds that Applicant refuted the opponents' testimony on this issue by explaining significant factors that qualify predictions that TS&G can or will actually mine all of its aggregate supply. See Wellner Letter dated November 8, 2013 (Exhibit 139). Specifically, Applicant noted that the TS&G site is entirely in the Urban Growth Boundary and thus is subject to pressures to develop with urban uses, Washington County has approved and scheduled construction of 124th Avenue directly across the TS&G site, and both a high-voltage power line corridor and natural resources exist on the site. The Board finds that all of these factors likely limit the ultimate mining and marketing of TS&G's existing aggregate reserve and thus refute opponents' testimony on this issue.

Third, the Board finds that all of the opponents' testimony is grounded in the email testimony of Roger Metcalf, a Vice-President at Tigard Sand & Gravel. See Attachment 2 to Madden Letter dated November 4, 2013 (Exhibit 132). The Board finds that Mr. Metcalf's testimony is less credible on this issue because Applicant is a potential competitor to TS&G in the aggregate market. As such, it is in Mr. Metcalf's business interest for the Board to deny the Applications. The Board discounts the opponents' testimony accordingly.

Fourth, the Board finds in the alternative that the opponents' testimony does not warrant denying or further conditioning the Applications because the opponents' testimony is incomplete. The Board reaches this conclusion because if the market does not support development of the Project, it will not develop, and none of the Project consequences—positive or negative—will result. While opponents' testimony addresses the absence of positive consequences, it fails to account for the absence of negative consequences. As such, it is incomplete. Therefore, the Board denies the opponents' contentions regarding public need.

The Board finds that there are no negative economic consequences to removing the wetlands and allowing the Project. Although Mr. Varma contends that developing the Project will reduce economic productivity due to citizens being stuck in traffic behind Project trucks, the Board denies this contention for three reasons. First, it is not supported by any evidence, such as an economic study or expert testimony. Second, the TIA refutes the contention that there will be any adverse traffic impacts associated with the Project. Instead, all study intersections will meet applicable performance standards, and Applicant will complete safety and capacity improvements in the area. See TIA in Appendix G of Applications. Third, Mr. Varma's contention ignores the potential increases in economic productivity that will result from aggregate from the Project being used to complete area transportation projects.

Further, although Mr. Varma contends that development of the Project will deter other development in the area, the Board denies this contention because it is speculative and not supported by any evidence. It appears to the Board that Mr. Varma's subsequent testimony that he intends to hire 6-11 new employees over the next three years to work at his business that is located approximately one mile from the Property does not support the claim that the Project will deter other development. See Varma Email dated November 8, 2013 (Exhibit 136).

Not Allowing Mine: The Board finds that if the County does not allow the mine in order to preserve the wetlands, the County will not reap any of the economic benefits associated with the Project and described above.

The Board finds that there are no identifiable positive economic consequences to preserving the wetlands and not allowing the Project. Although Ms. Madden contends that there are "difficult to quantify" positive economic consequences associated with preserving wetlands, including limiting flooding and related economic losses, the Board denies this contention. The Board finds that Ms. Madden has not adequately explained how preservation of these particular wetlands would actually result in less flooding and economic loss, or for that matter, why the remaining offsite wetlands would not be able to adequately perform this function. As a result, the Board finds that the connection between preserving the wetland and the positive economic benefit is simply too speculative and remote to weigh heavily in this balance.

Likewise, although Ms. Madden contends that the loss of the wetlands could result in a loss of visitors to the Refuge and a loss of "associated revenue for surrounding

communities,” the Board finds that Ms. Madden’s contention is speculative and not supported by any evidence of the revenue impact of Refuge visitors or how that revenue impact is affected by the loss of wetlands that are not even located in the Refuge. The Board denies Ms. Madden’s contention on this point.

Limiting Mine: The Board finds there are no identifiable positive economic consequences of preserving the wetlands and limiting the mine.

The Board finds that the negative economic consequences of limiting the mine are the loss of at least a portion of the positive economic consequences of allowing the mine. Further, in the event the County approves the mine but limits its extent by also requiring preservation of the conflicted wetlands, it will be tantamount to not allowing the mine at all because it would not be financially feasible to conduct mining operations on the Property in such a limited area. In that case, the Board finds that the negative economic consequences of limiting the mine are the loss of all of the positive economic consequences of allowing the mine.

As support for this conclusion, the Board relies upon Applicant’s testimony to this effect. See Wellner Letter dated September 24, 2013 (Exhibit 65g). The Board also relies upon testimony from Westlake Engineering that a revised mining plan that preserved Wetlands A, B, and C would reduce the volume of potential basalt rock resources by 45-55%, and that this reduction in mine-able area would actually increase due to operational considerations, including staging, storage, and work areas. See Westlake Wetland Preservation Concept Mining Plan (Exhibit 114). The Board also finds that this evidence refutes Ms. Madden’s contention that Applicant did not provide evidentiary support for its claim of lost volume associated with preserving the wetlands.

#### **Social:**

Allowing Mine: The Board finds that the positive social consequences of allowing the mine include: (1) the positive social esteem for the 10-15 workers employed at the mine; (2) the social benefits associated with utilizing aggregate from the mine to complete needed regional transportation improvements, including potentially some of the more than \$3 billion in planned improvements identified by the County’s Transportation System Plan; and (3) the social benefits of Applicant completing the off-site transportation improvements along SW Tonquin and Morgan Roads. As support for this conclusion, the Board relies upon the testimony of Applicant concerning Project impacts. See Wellner Letter dated September 24, 2013 (Exhibit 65g).

The Board finds that the negative social consequence of allowing the mine is the loss of wetland values; however, the Board finds that, on balance, this consequence is low because, as explained below, the value of the lost wetlands can be replaced by the new wetlands provided as mitigation.

Not Allowing Mine: The Board finds that the positive social consequence of not allowing the mine is the preservation of wetland values. Although Ms. Madden contends that

there is an “existence value” associated with the wetlands—“the value that many people place on the fact that an environmental amenity exists even if they do not derive specific utility from it (i.e. do not ‘use’ it in some way)”—the Board finds that, to the extent an existence value exists in this case at all, it is not substantiated and does not warrant further consideration in this analysis. The Board also denies this contention because Ms. Madden does not appear to consider that the “existence value” of the lost wetlands could be replaced by the new wetlands provided as mitigation.

The Board finds that the negative social consequences of not allowing the mine are that the 10-15 workers at the mine would not have the social esteem associated with employment, the region would not utilize its natural resources to serve the greater good, and Applicant would not complete the roadway improvements along SW Tonquin and SW Morgan Roads.

Limiting Mine: The Board finds that limiting the mine will limit the positive and negative social consequences described above. The Board finds that the degree to which these consequences are limited will be directly tied to the degree that the mine itself is limited. However, as stated above, in the event the County approves the mine but limits its extent by also requiring preservation of the conflicted wetlands, it will be tantamount to not allowing the mine at all because it would not be financially feasible to conduct mining operations on the Property in such a limited area. In that case, the negative social consequences of limiting the mine are the loss of all of the positive social consequences of allowing the mine.

As support for this conclusion, the Board relies upon Applicant’s testimony to this effect. See Wellner Letter dated September 24, 2013 (Exhibit 65g). The Board also relies upon testimony from Westlake Engineering that a revised mining plan that preserved Wetlands A, B, and C would reduce the volume of potential basalt rock resources by 45-55%, and that this reduction in mine-able area would actually increase due to operational considerations, including staging, storage, and work areas. See Westlake Wetland Preservation Concept Mining Plan (Exhibit 114).

#### **Environmental:**

Allowing Mine: The Board finds that the environmental consequences of allowing the mine are neutral. Although development of the Project will result in the loss of wetland values, the Board finds that these wetlands are quite small (approximately 1.78 acres) and generally isolated in nature. Although Ms. Madden contends that the wetlands are not small and isolated but instead preserve broader functions such as enhancing water quality in Rock Creek, the Board finds that this contention lacks merit. Rather, the Board finds that, as Project hydrologist Shannon & Wilson and Erin Holmes from the Refuge testified, the wetlands are sustained by precipitation and are disconnected from groundwater flowing to Rock Creek. See Holmes Letter dated September 23, 2013 (Exhibit 54) and Final Hydrogeologic Evaluation dated October 29, 2013 (Exhibit 92).

Further, as required by Condition 59, Applicant will complete all removal and fill activities in compliance with state and federal permits, which will require implementation of off-site mitigation measures in order to achieve "no net loss" of wetland values. See generally 33 USC Sect. 1344, ORS 196.795 *et seq.* In this way, the Board finds that the wetland resource and its related values will be replicated in another location, unlike when many other Goal 5 resources are lost. Although Ms. Madden and ODFW contend that the wetland values cannot be replicated in another location, the Board denies this contention for four reasons. First, the Board finds that wetland mitigation banks construct and restore wetlands years in advance of wetland impacts to assure no loss of wetland acreage, no temporal loss, and to achieve self-sustaining conditions. See TSI Letter dated September 24, 2013 (Exhibit 65e). Second, the Board finds that both state and federal wetland permitting agencies recognize mitigation as an appropriate means to offset wetland impacts. *Id.* Third, the Board finds that, in the event that state and federal permitting agencies deny the applicable permits due to insufficient mitigation, Applicant will be unable to remove the on-site wetlands and will not be able to implement its proposed mining plan. In other words, failure to provide adequate wetland mitigation will prevent development of the Project and will avoid any related adverse impacts to the environment. Fourth, although ODFW contends that no mitigation bank can reproduce the unique nature of on-site wetlands, the Board finds that ODFW has not explained, based upon substantial evidence, why this is the case. See ODFW Letter dated September 16, 2013 (Exhibit 32) and ODFW Email dated September 25, 2013 (Exhibit 68).

Finally, and in the alternative, even if the opponents are correct and the environmental consequences of allowing the Project are negative because the wetland values cannot be fully replicated elsewhere, the Board finds, for the reasons explained in this ESEE that, on balance, the overall positive consequences of allowing the Project exceed these few negative consequences of allowing the Project. Therefore, the Board finds that the opponents' contention is not a basis to deny or further condition the Project.

Although Ms. Madden further contends that the ESEE is flawed because it fails to consider impacts to off-site resources, the Board denies this contention because it is simply an extension of the flawed contention that the Project has not minimized all other conflicts with Goal 5 resources. For the reasons explained in these Supplemental Findings in response to OAR 660-0230-0180(5)(b)(D), the Board has already found, based upon substantial evidence and subject to conditions, Applicant has identified measures that will minimize potential conflicts with other Goal 5 resources. For example, as to the remaining portions of Wetlands B and C, Applicant will be preserving buffers and providing replenishment water for wetlands to maintain the average rainfall contribution during the rainy season. The Board further denies this contention for the reasons explained under the heading below "(A) The degree of adverse effect on existing land uses within the impact area."

Finally, although Ms. Madden contends that the County must consider the functional values provided by the on-site wetlands in completing this analysis, the Board denies this contention because no such assessment is required at this stage. As support for

this conclusion, the Board relies upon the testimony of scientist Phil Scoles, CPSS, who explained that a functional values assessment (also known as an Oregon Rapid Wetland Assessment Protocol ("ORWAP")) will instead be required in order for Applicant to obtain cut and fill permits from the State. See TSI Letter dated November 8, 2013 (Exhibit 141). Mr. Scoles explained that the ORWAP assessment results will dictate the nature and extent of mitigation needed to ensure "no net loss" of wetland functions. *Id.* Further, the Board finds that the functional values assessment provided by Mr. Leyda is of limited value because it did not examine the on-site portion of the wetlands, which are the only wetlands subject to this ESEE.

Not Allowing Mine: For the reasons stated above, the Board finds that the environmental consequences of not allowing the mine are also neutral. The Board reaches this conclusion because, although not allowing the mine will preserve the wetlands, it will also preclude implementation of the "no net loss" mitigation measures.

Limiting Mine: Due to the "no net loss" rule, the Board finds that the environmental consequences of limiting the mine are also neutral. Specifically, limiting the mine in order to preserve some of the wetlands will result in a corresponding decline in the "no net loss" mitigation measures.

#### **Energy:**

Allowing Mine: The Board finds that the energy consequences of allowing the mine are positive and substantial for two reasons. First, as explained above, mining the aggregate resource will facilitate completion of many needed transportation improvements, which will, in turn, provide greater capacity and smoother surfaces. As a result, vehicles on roads throughout the region will be able to consume less fuel because they will spend less time idling in traffic and/or confronting substandard road conditions. Second, the energy consequences of allowing a mine are also positive because the Property is proximate to the cities of Sherwood, Tualatin, Wilsonville, all locations where there is a significant amount of growth and demand for aggregate. Locating a mine near these markets will reduce the distance the product must travel, resulting in lower fuel costs.

The Property's proximity to major transportation corridors, such as Interstate 5, also reduces fuel costs and energy impacts compared to more remote locations. As support for this conclusion, the Board accepts Applicant's testimony that, compared to the Project, a proposed site in Molalla requiring 250 truck trips would generate an additional 3,750 miles in haul distance, add 83 hours of travel time, use an additional 469 gallons of fuel, and add approximately \$15,000 to the project cost. *Id.* No one presented substantial evidence that undermined this testimony.

The Board finds that the negative energy consequences of allowing the mine are that it will employ vehicles and machinery that will consume fuel in conjunction with completing extraction, processing, and distribution activities. However, the Board finds that the Project operator will have at least two incentives to utilize fuel-efficient

equipment. First, the Board finds that fuel is expensive and becoming moreso. Second, because Project operations will be subject to compliance with state and federal air quality standards, the Project operator will need to purchase and utilize late-model equipment which is designed to comply with U.S. Environmental Protection Agency Tier 2 standards. See Golder Report in Appendix I of the Applications. Thus, the Board finds that, on balance, the negative energy consequences are not likely to be significant.

Not Allowing Mine: The Board finds that the positive energy consequences of not allowing the mine are that there will be no utilization of mine-related equipment and trucks and thus no related consumption of fuel.

The Board finds that the negative energy consequences of not allowing the mine are that the region would not reap any of the positive energy consequences of allowing the mine. For example, if the mine is not allowed, the aggregate resource underneath the Property will not be used to facilitate completion of needed transportation improvements. As a result, vehicles will spend more time idling in traffic and thus consume more fuel.

Further, the region will need to locate a mine in another location, likely in a more remote location, which will generate additional vehicle miles traveled and a larger carbon footprint. As support for this conclusion, the Board accepts Applicant's testimony that, compared to the Project, a proposed site in Molalla requiring 250 truck trips would generate an additional 3,750 miles in haul distance, add 83 hours of travel time, use an additional 469 gallons of fuel, and add approximately \$15,000 to the project cost. *Id.* No one presented substantial evidence that undermined this testimony.

Limiting Mine: The Board finds that limiting the mine will limit the positive and negative energy consequences described above. The Board finds that the degree to which these consequences are limited will be directly tied to the degree that the mine itself is limited.

Having identified these ESEE consequences, the Board must weigh them with the following considerations:

**(A) The degree of adverse effect on existing land uses within the Impact Area;**

In the event the mine is allowed and Applicant removes/fills 1.78 acres of inventoried wetlands on the Property, the Board finds that the only adverse effect on existing land uses within the Impact Area is the potential loss of surface water flow to interrelated Wetlands B and C. However, as explained and conditioned above, the Board finds that the degree of this adverse effect is greatly limited for two reasons. First, Applicant will provide replenishment water for the avoided wetlands to maintain the average rainfall contribution during the rainy season in order to ensure that these interrelated wetlands are preserved. Second, Applicant will not remove/kill the wetlands until it has obtained state and federal permits, which will require implementation of off-site mitigation measures in order to achieve "no net loss" of wetland values. Based upon the

foregoing, the Board finds that removing/filling the wetland and allowing the mine will not result in any adverse effect on land uses within the Impact Area.

**(B) Reasonable and practical measures that could be taken to reduce the identified adverse effects; and**

As explained above, Applicant has proposed reasonable and practical measures that will reduce the identified adverse effect in two ways. First, Applicant will provide replenishment water for the avoided wetlands to maintain the average rainfall contribution during the rainy season in order to ensure that the interrelated wetlands are preserved. Second, Applicant will not remove/fill the wetlands until it has obtained state and federal permits, which will require implementation of off-site mitigation measures in order to achieve "no net loss" of wetland values. Based upon the foregoing, the Board finds that Applicant will be required to complete reasonable and practical measures to reduce the identified adverse effect to the avoided wetlands.

**(C) The probable duration of the mining operation and the proposed post-mining use of the site.**

Applicant testified that the probable duration of the mining operation is 15-20 years, depending upon market demand. As explained in response to subsection (5)(f) below, the Board finds that the post-mining uses of the Property are those allowed as of right and conditionally under a current map designation or such other uses as may be allowed under future alternative designation, or allowed by law. Thus, the Board finds that the mining operation is of limited duration, and the proposed post-mining use of the Property will be consistent with the law and surrounding uses.

Based upon the foregoing analysis, the Board finds that, on balance, the positive economic, social, environmental, and energy consequences associated with allowing the mine outweigh the negative consequences both in number and degree. Further, the Board finds that the additional considerations favor allowing the mine because there is only one potential adverse effect to a single land use if the mine is allowed, Applicant will implement reasonable and practical measures to reduce that potential adverse effect, and the mine will have a limited lifespan followed by reclamation as a permitted use. For these reasons, the Board finds that the ESEE supports allowing mining on the Property.

**(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review) if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:**

**(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;**

**(B) Not requested in the PAPA application; or**

**(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.**

The Board finds that its approval of the Project complies with this subsection. First, contemporaneous with its approval of these findings, the Board is adopting an ordinance to: (1) designate the Property as a significant Goal 5 resource in Chapter III, Table III-02 of the CCCP; and (2) apply the Mineral and Aggregate Overlay (MAO) designation to the Property. Second, the Board finds that its conditions of approval are clear and objective. As support for this conclusion, the Board finds that the Staff Report included 114 of the final conditions, and no party contended that these conditions were not clear and objective. Third, the Board finds that its decision also approves the Site Plan Review Application for the Project, which is consistent with the approvals for the PAPA Application and the Zone Change Application. Further, the Board finds that there are no additional land use reviews required for the Project.

**(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed in ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.580.**

The Board finds that the Project is not located on Class I, II, or Unique farmland. See Appendix A of the Applications. Therefore, the Board is not required to limit post-mining uses to farm uses under ORS 215.203, uses listed in ORS 215.213(1) or ORS 215.283(1), or fish and wildlife habitat uses.

Further, the Board finds that the Applicant has proposed, and the Board determines, that post-mining uses of the Property are those allowed as of right and conditionally under a current map designation or such uses as may be allowed under future alternative designation, if allowed by law.

Finally, the Board finds that the Applicant has included a proposed reclamation plan with the Applications. See Appendix B, Plate 4 of the Applications. The Applicant has testified that it has submitted this plan to DOGAMI for approval. The Board finds that it will have the opportunity to coordinate with DOGAMI during the DOGAMI review process in accordance with CCZDO 708.06.

The Board finds that the Applications satisfy the requirements of this subsection.

**(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.**

The Board finds that this section is not applicable because the Project is not a currently approved aggregate processing operation at an existing site.

**(7) Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)**

The Board finds that this provision outlines the procedures for the County to follow if the County, in its discretion, intends to allow, limit, or prevent new conflicting uses within the Impact Area of the Project. In this case, neither the Applicant nor any other parties are requesting that the County engage in this discretionary determination at this time. Further, County staff have testified that reliance upon the provisions of CCZDO 708.08 ("Impact Area Uses and Development Standards") is sufficient to protect the Project from new conflicting uses. Therefore, the Board declines to conduct an ESEE to allow, limit, or prevent new conflicting uses within the Impact Area of the Project.

**(8) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes:**

**(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;**

For the reasons set forth at page 59 of the Staff Report, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. Further, for the reasons set forth above in response to OAR 660-023-0180(3), the Board denies the contentions from Dr. Jenkins and Ms. Madden that the Applicant provided incomplete information regarding quantity, quality, and location of the aggregate material in the deposit.

**(b) A conceptual site reclamation plan;**

The PAPA Application includes a conceptual reclamation plan at Figure 6, Tab D. The Board finds that the PAPA Application includes the information required by this subsection.

**(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;**

For the reasons set forth at pages 59-60 of the Staff Report, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. Further, for the reasons set forth above in response to OAR 660-023-0180(5)(b)(B), the Board denies the contentions from the City of Wilsonville that the Applicant provided incomplete information regarding traffic impacts.

**(d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and**

For the reasons set forth at page 60 of the Staff Report, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. As additional findings in response to this subsection, the Board incorporates by reference the findings and conditions set forth above in response to OAR 660-023-0180(5)(c), which explain the Applicant's proposals to minimize conflicts with existing uses within the Impact Area.

**(e) A site plan indicating the location, hours of operation and other pertinent information for all proposed mining and associated uses.**

For the reasons set forth at page 60 of the Staff Report, which reasons are incorporated herein by reference, the Board finds that the Applications include the information required by this subsection.

**(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:**

**(a) Such regulations were acknowledged subsequent to 1989; and**

**(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-023-0250(7).**

The Board finds that the County has not yet amended its comprehensive plan and land use regulations to include procedures and requirements consistent with OAR 660-023-0180, including specific criteria regarding the consideration of a PAPA concerning mining authorization. Thus, in accordance with this subsection, the Board finds that the County is required to directly apply both the substantive requirements and procedures of OAR 660-023-0180 when evaluating a PAPA concerning mining authorization. See also *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999), *aff'd* 165 Or App 512 (2000); *Eugene Sand & Gravel, Inc. v. Lane County*, 44 Or LUBA 50, 96 (2003), *aff'd* 189 Or App 21 (2003) ("The Goal 5 rule for aggregate establishes a comprehensive regulatory scheme that is intended to supersede local review standards for aggregate.")

The Board finds further finds that, in accordance with this subsection and the referenced case law, the provisions of the CCCP and the CCZDO are not applicable to the PAPA and Zone Change Applications. As a result, the Board does not adopt or incorporate the provisions of the Section 1, Part 2 ("Compliance with Clackamas County Comprehensive Plan Policies") or Section 2 ("Zoning Map Change Application (File No. Z0288-13-Z)") of the Staff Report in these findings.

The Board finds that, subject to these findings, the County has properly applied the provisions of OAR 660-023-0180 to the PAPA Application and the Zone Change Application.

## **SUPPLEMENTAL FINDINGS FOR THE SITE PLAN REVIEW APPLICATION**

The Board finds that the Site Plan Review Application satisfies applicable approval criteria set forth in the CCZDO as follows:

### **708 MINERAL & AGGREGATE OVERLAY DISTRICT (MAO)**

#### **708.02 DEFINITIONS**

***Impact Area.* The area surrounding the Extraction Area where conflicting uses are regulated to ensure that the resource site is protected to some extent. The County determines the Impact Area for each resource site.**

The Board finds that the "impact area" for purposes of CCZDO 708 is limited to the Property and does not include any off-site properties. As a result, although Mr. Jacobs contends that approval of the mine will preclude him from developing certain uses on his property such as a bed and breakfast facility, the Board denies this contention. No aspect of the approval precludes the development of new uses on other properties. To the extent that Mr. Jacobs claims he is so limited, the Board finds that it a result of his voluntary decision. The Board finds that Mr. Jacobs and other owners of off-site

properties continue to be allowed to develop their properties in accordance with the CCCP and CCZDO and upon obtaining any applicable permits.

#### **708.04       EXTRACTION AREA USES**

**A.     The County may allow the following uses subject to standards of ZDO 708.05, and any requirements adopted as part of the Comprehensive Plan.**

**1.     Mining;**

Applicant has proposed mining within the Extraction Area. Subject to the conditions of this approval, the Board allows mining within the Extraction Area.

**2.     Processing, except the batching or blending of mineral and aggregate materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date the application was received for the asphalt batch plant;**

Applicant has proposed processing (not to include an asphalt batch plant) within the Extraction Areas. Subject to the conditions of this approval, the Board allows processing within the Extraction Area.

**3.     Stockpiling of mineral and aggregate materials extracted and processed onsite;**

Applicant has proposed to stockpile mineral and aggregate materials extracted and processed onsite. See Plate 3 of the DOGAMI Mining and Operations Plan for specific locations. Subject to the conditions of this approval, the Board allows stockpiling within the Extraction Area.

**4.     Temporary offices, shops or other accessory structures used for the management and maintenance of onsite mining and processing equipment;**

Applicant has proposed a temporary office, parking, and scale area within the Extraction Area. See Plates 3 and 3A of the DOGAMI Mining and Operations Plan for specific locations. Subject to the conditions of this approval, the Board allows the temporary office, parking, and scale area within the Extraction Area.

**5.     Sale of mining products extracted and processed onsite;**

Applicant has proposed the sale of mining products extracted and processed onsite within the Extraction Area. Subject to the conditions of this approval, the Board allows the sale of mining products extracted and processed onsite within the Extraction Area.

**6.     Storage of transportation equipment or machinery used in conjunction with onsite mining or processing;**

Applicant has proposed to store equipment used in conjunction with the onsite mining and processing, including but not limited to a dozer, trackhoe, front-end loader, other similar implements, and associated processing equipment. Subject to the conditions of this approval, the Board allows this storage within the Extraction Area.

**7. Other activities including buildings and structures necessary and accessory to development or reclamation of the onsite mineral or aggregate resource.**

The Board finds that all of Applicant's proposed uses [mining and processing (not to include an asphalt batch plant), a management and sales office, parking, an associated scale, temporary stockpiling of material, sale of mining products extracted and processed onsite, and the use and storage of equipment for the purpose of mining and processing] are allowed within the Extraction Area.

**B. The County may permit other uses allowed by the underlying zone subject to requirements of the underlying zone and requirements of this section for protection of significant mineral and aggregate sites.**

The Board finds that no other uses are proposed or permitted within the Extraction Area.

**708.05 EXTRACTION AREA DEVELOPMENT STANDARDS**

**The following standards are the basis for regulating mining and processing activities in the Mineral and Aggregate Overlay District. Requirements adopted as part of the Comprehensive Plan also apply to mining and processing activities in the overlay. Before beginning any mining or processing activity, the applicant shall show compliance with these standards and requirements adopted as part of the Comprehensive Plan program.**

**A. Access. Onsite roads used in mining and processing, and access roads from the Extraction Area to a public road shall meet the following standards:**

**1. All access roads within 100 feet of a paved county road or state highway shall be paved, oiled or watered:**

The Board finds that the Project includes a single access road from the Extraction Area to a public road (SW Morgan Road), approximately 415 feet south of the intersection with SW Tonquin Road. See Site Plan Review Application narrative at 3. As explained in the Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), the Board finds it necessary to impose conditions of approval to minimize potential dust conflicts as follows:

- “70. The main facility access road shall include a gravel surface consisting of crushed rock with nominal sizing of at least one inch maximum dimension within 300 feet of any public road.”
- “71. The main facility access road shall be watered to prevent the generation of dust within 300 feet of any public road.”
- “72. The operator shall maintain a truck wheel wash system for product trucks exiting the access road to the public road to reduce soil track-out onto the public road.”
- “73. Onsite surfaces travelled by off-road or on-road mobile sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.”

The Board finds that the requirements of these conditions pertaining to access roads exceed the requirements of this standard. Therefore, the Board finds that compliance with these conditions will ensure compliance with this standard.

**2. All roads in the Extraction Area shall be constructed and maintained to ensure compliance with applicable state standards for noise control and ambient air quality.**

For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that all roads in the Extraction Area will be constructed and maintained to ensure compliance with applicable state standards for noise control and ambient air quality, subject to compliance with the following conditions:

- “52. The Quarry operator shall comply with the final noise study prepared by Daly-Standlee and Associates, Inc. (DSA) dated September 23, 2013 and the supplemental letter dated September 5, 2013 by DSA.”
- “70. The main facility access road shall include a gravel surface consisting of crushed rock with nominal sizing of at least one inch maximum dimension within 300 feet of any public road.”
- “71. The main facility access road shall be watered to prevent the generation of dust within 300 feet of any public road.”
- “72. The operator shall maintain a truck wheel wash system for product trucks exiting the access road to the public road to reduce soil track-out onto the public road.”

- “73. Onsite surfaces travelled by off-road or on-road mobile sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.”

**3. All roads in the Extraction Area shall be paved at all points within 250 feet of a noise or dust sensitive use existing on February 22, 1996.**

Applicant testified that noise or dust sensitive uses within 250 feet of the site boundary that existed on February 22, 1996 are limited to the homes located at 12535 SW Morgan Road (31W04A00104) and 12551 SW Morgan Road (31W04A00902). See Site Plan Review narrative at 5. County staff concurred with this testimony. See Staff Report at 69. No one challenged this testimony or contended that other noise- or dust-sensitive uses existed within this area on February 22, 1996. Accordingly, the Board finds that no specific road locations are proposed within the Extraction Area within 250 feet of affected uses. The Board further finds that this provision is a continuing obligation. Accordingly, if in the future, any roads internal to the Extraction Area are constructed within 250 feet of the affected uses, those roads will be paved.

**B. Screening**

**1. The mining activities listed in Subsection (B)(2) of this Section shall be obscured from the view of screened uses, unless one of the exceptions in Subsection (B)(4) applies. Screening shall be accomplished in a manner consistent with Subsection (B)(3).**

Applicant also submitted a landscape plan identifying existing vegetation and topographic features within the Extraction Area that will be preserved to provide adequate screening. See Appendix K to Applications. Additionally, in areas where existing vegetation and/or topographic features are not adequate to provide effective screening or cannot be preserved due to conflicts with mining activities, Applicant has proposed specific types and densities of plantings. *Id.* Applicant testified in detail as to the screening measures that would be implemented along each boundary of the Property. See Site Plan Review narrative at 6-8. No one contended that the Project would not comply with this standard.

Based upon the testimony presented, the Board finds that the Site Plan Review Application complies with this standard, subject to obtaining the exceptions identified below and subject to compliance with the following condition:

“13. The applicant and/or operator of the quarry shall maintain the following screening measures for the property: 1) a cyclone fence with wood slats and/or vegetation, installed around the property; 2) noise mitigation barriers in accordance with the Tonquin Quarry Noise Study dated September 23, 2013; and 3) natural and supplied screening as outlined by the Murase and Associates landscape plan dated April 2013, or as otherwise required herein.”

**2. Mining activities to be screened:**

- a) All excavated areas, except: areas where reclamation activity is being performed, internal onsite roads existing on the date of county adoption, new roads approved as part of the Site Plan Review, material excavated to create berms, and material excavated to change the level of the mine site to an elevation that provides natural screening,**
- b) All processing equipment.**
- c) All equipment stored on the site.**

The Board finds, for the reasons set forth in response to CCZDO 708.05.B.1, which reasons are incorporated herein by reference, the Site Plan Review Application satisfies this standard.

**2. Types of screening**

- a) Natural screening is existing vegetation or other landscape features within the boundaries of the Extraction Area that obscure mining activities from screened uses. Natural screening shall be preserved and maintained except where removed according to a mining or reclamation plan approved by DOGAMI.**
- b) Supplied screening is either vegetative or earthen screening. Supplied vegetative screening is screening that does not exist at the time of the Site Plan Review. Plantings used in supplied vegetative screening shall be evergreen shrubs and trees, and shall not be required to exceed six feet in height when planted. Supplied earthen screening shall consist of berms covered with earth stabilized with ground cover.**

The Board finds, for the reasons set forth in response to CCZDO 708.05.B.1, which reasons are incorporated herein by reference, the Site Plan Review Application satisfies this standard.

**3. Exceptions. Supplied screening shall not be required if any of the following circumstances exist:**

- a) The natural topography of the site obscures mining and processing from screened uses.**
- b) Supplied screening cannot obscure mining and processing from screened uses because of local topography.**
- c) Supplied vegetative screening cannot reliably be established or cannot survive due to soil, water or climatic conditions.**

Applicant testified that it utilized Google Earth and ArcGIS software to closely examine existing topography between the proposed mining area and screened uses within 1,500 feet of the Project. See Site Plan Review Application narrative at 9-10. From this review, Applicant determined that, in most instances, adequate screening was available or could be supplied. *Id.*

Applicant concluded that in four instances, it was possible that supplied screening would not be able to obscure mining and processing from screened uses because of local topography: 31W04A00200 (Prince), 31W04A00201 (Anderson), 31W04A00204 (Anderson), and 31W04A01700 (Grossarth). *Id.* All four uses are located at substantially higher elevations than those existing today within the Tonquin Quarry and they do not fully benefit from the preservation of the high point ridgeline found along the westerly edge of the subject property. *Id.*

Accordingly, the Board finds that supplied screening may not be able to obscure mining and processing from screened uses in these locations. Therefore, the Board finds that there are grounds to grant exceptions to the supplied screening requirement under subsection 3(b) in these locations.

**C. Air and Water Quality. The discharge of contaminants and dust created by mining and processing shall comply with applicable state air quality and emissions standards and applicable state and federal water quality standards.**

For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A) and CCZDO 708.05.H, which reasons are incorporated herein by reference, the Project's discharge of contaminants and dust will comply with applicable state air quality and emission standards and applicable state and federal water quality standards, subject to relevant conditions imposed in this decision. Therefore, the Board finds that the Site Plan Review Application satisfies this section.

**D. Streams and Drainage. Mining and processing shall not occur within 100 feet of mean high water of any lake, river, perennial water body or wetland not constructed as part of a reclamation plan approved by DOGAMI unless allowed by specific provisions adopted in the Comprehensive Plan.**

The Board finds that Applicant's Site Plan Review Application does not propose any mining or processing activities within 100 feet of the mean high water of any lake, river, perennial water body or wetland not constructed as part of a reclamation plan, except as allowed by the site-specific mining program applicable to the Property. As explained in detail above, Applicant is proposing to remove/fill 1.78 acres of inventoried wetlands, subject to obtaining state and federal permits and to ensuring "no net loss" of wetland values. Additionally, Applicant has proposed 50-foot buffers from avoided wetlands in some locations. The Board finds that these site-specific determinations control over the 100-foot standard set forth in this subsection.

**E. Noise.** Mining and processing shall comply with state noise control standards. Operators may show compliance with noise standards through the report of a certified engineer that identifies mitigation methods to control noise. Examples of noise mitigation measures are siting mining and processing using existing topography, using supplied berms, or modifying mining and processing equipment.

The Board finds that the Project will comply with state noise control standards, subject to incorporating identified mitigation measures, for the reasons set forth in response to OAR 660-023-0180(5)(b)(A) of these findings, and subject to imposing Conditions 52, 53, 54, 55, and 55a. The Board incorporates these reasons and conditions in response to this standard.

**F. Hours of Operation.**

**1. Mining and processing is restricted to the hours of 7:00 AM to 6:00 PM Monday through Friday, and 8:00 AM to 5:00 PM Saturday. Hauling and other activities may operate without restriction provided that state noise control standards are met.**

**2. No operations shall take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day.**

The Board finds that the Project satisfies this standard, subject to compliance with the following conditions of approval:

- "4. Mining (including but not limited to excavation and processing) is restricted to the hours of 7:00 AM to 6:00 PM Monday through Friday, and 8:00 AM to 5:00 PM Saturday. Drilling and blasting is restricted to the hours of 9:00 AM to 4:00 PM Monday through Friday."
- "5. No mining (including but not limited to excavation and processing), drilling, or blasting operations shall take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Further, no drilling or blasting operations shall take place on Saturdays."

**G. Drilling and Blasting.**

**1. Drilling and blasting is restricted to the hours of 9:00 AM to 4:00 PM Monday through Friday. No drilling or blasting shall occur on Saturdays, Sundays, or the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.**

Subject to compliance with Conditions 4 and 5 quoted above, the Board finds that the Project satisfies this standard.

**2. Notice of blasting events shall be posted at the Extraction Area in a manner calculated to be seen by landowners, tenants and the public at least 48 hours prior to the blasting event. In the case of ongoing blasting activities, notice shall be provided once each month for the period of blasting activities, and specify the days and hours when the blasting event is expected to occur.**

The Board finds that Wallace Technical Blasting, Inc. has provided a series of recommendations intended to establish an open line of communication between the proposed operation and its neighboring properties. See "A Site Specific Blasting Plan to Support the Application for a Permit to Engage in Mining Operations at the Tonquin Quarry in Clackamas County" from Wallace Technical Blasting, Inc. dated April 12, 2013 in Appendix F of the Applications. For example, neighbors can request that their names be added to a call/text list to be notified the morning of the event. *Id.* Consistent with neighboring quarries, a series of USBM mandated pre-blast signals will be made 5 minutes and 1 minute prior to initiation. *Id.* Several other recommendations are included in the Project blasting plan. *Id.* The Board finds, based upon the testimony in the record, and subject to compliance with the following conditions, the Project satisfies this standard:

"56. The Quarry operator shall comply with the blasting plan prepared by Wallace Technical Blasting, Inc. dated April 13, 2013."

"57. Notice of blasting events shall be posted at the Extraction Area in a manner calculated to be seen by landowners, tenants and the public at least 48 hours prior to the blasting event. In the case of ongoing blasting activities, notice shall be provided once each month for the period of blasting activities, and specify the days and hours when the blasting event is expected to occur."

**H. Surface and Ground Water. Surface and ground water shall be managed in a manner that meets all applicable state water quality standards and DOGAMI requirements. The applicant shall demonstrate that all water necessary for the proposed operation has been appropriated to the site and is legally available.**

## **SURFACE WATER**

The Board finds that Project surface water will be managed in a manner that meets all applicable state water quality standards and DOGAMI requirements. As support for this conclusion, the Board relies upon testimony from the Project civil engineer, Westlake that the Project complies with stormwater management requirements of all applicable agencies, including DOGAMI (as to stormwater generated on-site) and WES (as to stormwater generated off-site). See Offsite Stormwater Analysis dated April 20, 2013 at Appendix D of the Applications. Further, Westlake explained that Applicant has

designed the Project such that there will be no offsite stormwater point discharge from the Project. *Id.*

## **GROUNDWATER**

Additionally, the Board finds that the Project will maintain applicable state water quality standards and DOGAMI requirements pertaining to groundwater. As support for this conclusion, the Board relies upon the testimony of Project hydrogeologist Shannon & Wilson, which concludes that, although conflicts may occur between the Project and nearby residential properties, these conflicts can be minimized by implementing eight different monitoring and mitigation measures. See Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92). The Board finds that this testimony is compelling in light of Shannon & Wilson's extensive experience and detailed analysis, which includes reviewing feedback from on-site monitoring wells for approximately five years. See G. Peterson and D. King resumes in Appendix N of Applications. Accordingly, the Board finds that the measures identified by Shannon & Wilson will ensure that the Project complies with applicable state standards regarding water quality and DOGAMI requirements pertaining to water quantity. Therefore, the Board imposes these measures in the following conditions of approval:

"45. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Onsite observation wells currently focus on water-bearing zone #3. Prior to excavation to -100 feet mean sea level (msl), three additional borings (core holes) shall be completed to directly identify and characterize water-bearing zone #4. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. All three installations shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity."

"46. Long-term groundwater level monitoring shall focus on water-bearing zones #3 and #4, and automated monitoring shall include existing and new observation wells. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of two years, and shall continue per DOGAMI requirements until mining activities are complete."

"47. Packer tests and slug tests shall be performed during drilling to estimate the water-bearing zone's hydraulic conductivity, which will facilitate mitigation and dewatering system design. The tests should focus at the design depths for the proposed infiltration benches and at water-bearing zones #3 and #4."

"48. Subject to documented access permission from private property owners, the monitoring of existing offsite wells associated with the properties listed below is required. The following property owners and properties have been identified as having a potentially high risk of conflict with groundwater quantity:

- a. Fred Smith, 12551 SW Morgan Road, Sherwood;
- b. Lee and Andrea Patrick, 12535 SW Morgan Road, Sherwood;
- c. James B. and Marilyn Kramer, 12525 SW Morgan Road, Sherwood;
- d. James P. Kramer, 12885 SW Morgan Road, Sherwood; and
- e. Mark S. Platt, 12557 SW Morgan Road, Sherwood.

Subject to access authorization, monitoring protocols shall include the development of a baseline well status report for the five domestic wells within 90 days after commencement of site construction. If access is provided, the Site Operator will monitor water levels within 30 days of a request from a property owner to assess potential impacts.

In the event private well monitoring indicates a measured loss of 20 percent or greater in daily domestic water supply, the following shall occur:

- i. Supplemental mitigation shall be provided including but not limited to deepening or replacement of private wells to tap deeper aquifers that are isolated from shallower mining impacts;
- ii. Within 72 hours the applicant/operator shall provide not less than 400 gallons per 24 hour period of potable water for domestic use, by water tanker or other source to the above referenced affected owner. In the event that the provision of potable water becomes necessary, as requested by the affected property owner, a temporary above-ground potable water storage container shall be provided on the affected parcel. The container shall provide no less than 400 gallons of storage."

"49. Mitigation measures, including infiltration benches or injection wells along the south property boundary, shall be designed, built, and monitored to proactively avoid offsite impacts. Infiltration benches shall be constructed above water-bearing zone #3 (about 75 msl) in rock suitable to facilitate infiltration. Water applied to the infiltration bench provides a positive hydrostatic head in the rock mass that reduces groundwater declines adjacent to the quarry. The additional test borings,

instrumentation, and monitoring, as well observed seepage into the active quarry shall be utilized for development of final design and evaluation of mitigation measures. Should proactive infiltration fail or deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in well operation and storage capacity shall be considered as alternate mitigation options to alleviate water quality or quantity impacts.

"50. The quarry's excavation depth shall be maintained above water-bearing zone #4 identified in the Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92)."

"51. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Protection Agency and shown in Appendix M of the Application."

As additional support for its conclusion that the Project will satisfy groundwater standards, the Board relies upon testimony from an independent hydrogeologist that implementing the measures recommended by Shannon & Wilson will resolve potential conflicts with area groundwater users:

"Farallon concludes that the proactive groundwater monitoring proposed between the developing quarry and the potentially impacted residential water supply wells will provide the information necessary to implement mitigation measures as needed and before moderate or substantial impacts to those groundwater users can occur. Farallon concludes that, based on the information presented in the Hydrogeologic Report, there are sufficient mitigation options to alleviate the potential conflicts with identified groundwater users. Farallon also concludes that the proposed mitigation measures can also be used to recharge shallower Water-Bearing Zones 1 and 2 if recharge to those Water-Bearing Zones is necessary to mitigate for nearby shallow groundwater users or wetlands."

See Farallon Consulting Letter dated October 29, 2013 at 3 (Exhibit 91). Farallon reached this conclusion after independently evaluating Shannon & Wilson's hydrogeologic technical approach, conclusions, and recommendations set forth in the Final Hydrogeologic Evaluation Report dated October 29, 2013. *Id.*

The Board finds that opponents' contentions to the contrary do not undermine the well-reasoned conclusions of Shannon & Wilson and Farallon. For example, although Dr. Jenkins contends that there is insufficient evidence to support the conclusion that the proposed mitigation measures are feasible, the Board denies this contention. As support for its conclusion, the Board finds that Conditions 46-50 allow for various types of mitigation, as site conditions warrant (i.e., infiltration trenches, injection wells, well-

deepening). Therefore, even if one type of mitigation is not successful, Applicant has the flexibility to address it in other ways.

Further, the Board finds that the Project's proposed mining plan commences on the northern portion of the Property, which is the location farthest from the affected residential wells. The Board finds that this fact will allow Applicant ample time (i.e., years) to assess whether the Project is actually causing dewatering impacts before there is a substantive loss of use to the residential user. See Farallon Consulting Letter dated October 29, 2013 (Exhibit 91).

Finally, the Board relies upon testimony that the proposed mitigation measures are achievable (See Shannon & Wilson Memorandum dated November 4, 2013 (Exhibit 118)), and that, as a last resort, well deepening is both technically feasible and will serve to mitigate adverse effects to affected wells. See Shannon & Wilson Rebuttal Memorandum dated November 8, 2013 (Exhibit 140). Although Dr. Jenkins contends that well-deepening may not be feasible because increased demand on Water-Bearing Zone #4 may not be allowed, the Board denies this contention for two reasons. First, the Board finds that Dr. Jenkins' testimony is speculative because Dr. Jenkins did not present any testimony of a moratorium on well-drilling or deepening of existing, domestic, exempt water wells. By contrast, Shannon & Wilson testified that its scientists were not aware of any such moratorium. See Shannon & Wilson Rebuttal Memorandum (Exhibit 140). Further, the Board finds, for the reasons set forth below under the heading "Availability of Water," which reasons are incorporated herein by reference, Applicant has demonstrated that all water necessary for the Project has been appropriated to the Property and is legally available.

Although Dr. Jenkins contends that the Shannon & Wilson analysis is deficient because it did not include hydrologic field testing of specific water-bearing zones, the Board denies this contention because Conditions 46 and 47 require this testing. The Board finds that these tests will inform the timing and selection of mitigation measures, as needed.

Further, although Dr. Jenkins and Ms. Madden contend that the Property is located in a Groundwater Limited Area, the Board finds that opponents have not explained how this fact permits the County to deny or further condition the Applications. Therefore, the Board denies this contention.

Although Dr. Jenkins contends that potential contaminants from the Project may enter groundwater and potentially pollute offsite wells, the Board finds that Applicant has addressed this concern in two ways. First, as noted above, approval of the Applications is subject to Condition 51, which requires Applicant to prepare a Spill Prevention Control and Countermeasure (SPCC) Plan consistent with the EPA sample included in the Applications. See Appendix M of the Applications. The Board finds, based upon that model and the explanation set forth in the Final Hydrogeologic Evaluation dated October 29, 2013, that Applicant's SPCC will, at minimum, include:

- Facility diagram;
- Site security measures;
- Descriptions of proper petroleum product transfer procedures and other activities that might result in a release;
- Descriptions of all appropriate Best Management Practices (BMPs), including those associated with the containment and other countermeasures that would prevent oil spills from reaching navigable waters;
- A Spill Contingency Plan specifically designed for the proposed Tonquin Quarry;
- Personnel training practices and schedule;
- Descriptions of record-keeping practices; and
- Management approval.

Further, the Board finds that compliance with the SPCC Plan, together with implementation of the stormwater management system, will prevent and mitigate impacts from spills and will ensure that the mechanical aspects of the mining operation (drilling, blasting, crushing, hauling) will not be a possible groundwater contamination source. As support for this conclusion, the Board relies upon the expert opinion to this effect from Shannon & Wilson. See Final Hydrogeologic Report dated October 29, 2013 (Exhibit 92). The Board finds that no one rebutted or challenged this testimony with specificity.

Second, the Board finds that, in the event Applicant implements infiltration benches or injection wells in order to offset groundwater dewatering, there are measures that can ensure that groundwater will comply with federal standards pertaining to quality. In support of this conclusion, the Board relies upon testimony from Shannon & Wilson that baseline testing for volatile organic compounds, synthetic organic compounds, bacteriological analyses, major ions, and 17 metals, followed by periodic monitoring of same, Applicant will ensure groundwater compliance with the Safe Drinking Water Act of 1974 and subsequent amendments. *Id.* at 35-36 and Table 6. In order to ensure that the Project follows the recommended water quality testing, the Board imposes the following condition of approval:

“49a. In the event the applicant/operator implements injection wells or infiltration trenches as a groundwater quantity mitigation measure, applicant/operator will implement the groundwater quality baseline testing and periodic monitoring program outlined in the Shannon & Wilson Final Hydrogeologic Evaluation Report dated October 29, 2013 (Exhibit 92) to ensure that the injection/infiltration water complies with the Safe Drinking Water Act of 1974 and subsequent amendments.”

No one contended that Shannon & Wilson's program would fail to maintain water quality standards.

Although multiple opponents contend that the Project will cause dewatering of groundwater that will adversely affect wetlands and Rock Creek, the Board denies these

contentions for the reasons set forth in response to OAR 660-023-0180(5)(b)(D), which reasons are incorporated herein by reference.

Finally, as additional findings in support of its conclusion that the Site Plan Review Application satisfies this standard, the Board accepts, adopts, and incorporates by reference, the explanations set forth in Shannon & Wilson's submittals into the record dated September 30, 2013 (Exhibit 66c); November 4, 2013 (Exhibit 118); and November 8, 2013 (Exhibit 140).

## **AVAILABILITY OF WATER**

Finally, the Board finds that Applicant has demonstrated that all water necessary for the proposed operation has been appropriated to the Property and is legally available. As support for this conclusion, the Board relies upon two sources. First, the Board relies upon the fact that, as an industrial operation, the Project is an "exempt use" under state law and thus has a water right not to exceed 5,000 gallons per day. ORS 537.545. Further, the Board finds that, pursuant to this statute, no registration, certificate, or permit is required for such use of groundwater. *Id.* Further, based upon testimony from Applicant, the Board finds that Project operations are not anticipated to exceed the "exempt use" allocation of 5,000 gallons per day because the Project will require minimal use of on-site water (typically just the amount necessary to comply with Conditions 72 (truck wheel wash system), 73 (requirement to water surfaces), and 74 (requiring water sprayers for crushers and screens). See Site Plan Review Application narrative at 14-15. The Board finds that this testimony was not rebutted or challenged.

Second, the Board relies upon testimony from the Project hydrogeologist that, factoring in the Project's exempt use allocation as well as rights for current and future users in the vicinity, the aquifer will not be overdrawn:

"The scenario evaluated by our model suggests that if all current and reasonably anticipated future users maximized their allotted use, including the proposed exempt well supplying Tonquin Holdings LLC quarry operations, that approximately 85% of the groundwater recharge is allocated. Hence overdrafting of the aquifer is not predicted."

See Shannon & Wilson Final Hydrogeologic Evaluation dated October 29, 2013 at 23 (Exhibit 92). The Board finds that, as explained in its report, Shannon & Wilson reached this conclusion after conducting a comprehensive analysis of all 50 tax lots located within a quarter-mile of the Property, and then making appropriate adjustments based upon existing well locations, County records regarding lots of record, and anticipated uses. *Id.* at 20-23 and Table 4. Further, the Board finds that this testimony was not rebutted or challenged. Therefore, the Board finds that a reasonable person would rely upon the testimony from Applicant and Shannon & Wilson to conclude that all water necessary for the proposed operation has been appropriated to the site and is legally available.

**I. Compliance with Special Conditions. The County may impose additional, special conditions to resolve issues specific to an individual site. The conditions shall be specified in the site-specific program to achieve the Goal adopted as part of the Comprehensive Plan.**

The Board finds that, in order to ensure compliance with applicable approval criteria and to resolve issues specific to the Property, it is necessary to impose special conditions on the approval of the Project. The conditions are numbered 1-114 and will be specified in the site-specific program to achieve Goal 5 that is adopted as part of the CCCP. The Board supplements these general findings in support of the conditions with the more specific findings tailored to specific conditions of approval that are set forth throughout these findings.

**J. Security. The permittee shall fence the Extraction Area boundary between the mining site and any parcel where dwellings are a principal use. Fencing shall be a cyclone type fence a minimum of six feet high.**

Applicant testified that it will install a minimum 6 foot tall cyclone fence with site obscuring wood slats around the perimeter of the Project. See Site Plan Review Application narrative at 6-8. In most locations, Applicant will place this fence at or near the Property boundary. *Id.* However, Applicant stated that there are a couple of sections where sight distance restrictions, wetland setbacks, and existing topography will require field verification to identify the most appropriate location for the fence. *Id.* However, the Board finds that, other than at the site access on SW Morgan Road, all mining activities will occur on the interior of the perimeter fence. *Id.* Based upon this testimony, the Board finds that the Project satisfies this standard.

**K. Performance requirements.**

**1. The mining operator shall maintain DOGAMI and other state agency permits.**

**2. The mining operator shall carry a comprehensive general liability policy covering mining, and incidental activities during the term of operation and reclamation, with an occurrence limit of at least \$500,000. A certificate of insurance for a term of one year shall be deposited with the County prior to the commencement of mining and a current certificate of insurance shall be kept on file with the County during the term of operation and reclamation.**

Applicant has testified that it intends to comply with these requirements and has proposed conditions of approval to ensure the same. See Site Plan Review Application narrative at 16-17. Further, the Board finds that compliance with these conditions is feasible because obtaining the state agency permits and insurance policy is not precluded as a matter of law. Based upon this testimony and subject to imposing the following conditions of approval, the Board finds that the Project satisfies this standard:

- "6. The applicant and/or operator shall not initiate mining and activities on the Quarry until the State Department of Geology and Mineral Industries approves the reclamation plan and operating permit for the Quarry."
- "8. The applicant and/or operator shall obtain Oregon DEQ approval of a Spill Prevention Controls and Countermeasures Plan for the Quarry and shall comply with same."
- "9. Copies of all permits issued for the Quarry shall be provided to the County including, but not limited to, any permits issued by DOGAMI, DSL, DEQ, the Oregon Water Resources Department, the Oregon Fire Marshall's Office, and the U.S. Army Corps of Engineers."
- "59. The applicant and/or operator shall not fill, excavate or otherwise disturb wetlands on the property until first obtaining appropriate permits from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps) and implements any required pre-disturbance mitigation measures. The applicant and/or operator shall provide County Planning and/or WES/SWMACC with copies of any annual monitoring reports required by DSL and/or Corps."
- "68. The Quarry Operator shall comply with OAR 340-200 through 340-246 requirements."
- "69. The Quarry Operator shall comply with 40 CFR Part 60 Subpart OOOO requirements."
- "10. The Quarry operator shall carry a comprehensive liability policy covering mining and incidental activities during the term of the operation and reclamation, with an occurrence limit of at least \$500,000. A certificate of insurance for a term of one (1) year shall be deposited with the County prior to the commencement of mining, and a current certificate of insurance shall be kept on file with the County during the term of operation and reclamation."

## **708.06 RECLAMATION**

**A. No mining shall begin until the permittee provides the county with a copy of a DOGAMI Operating Permit or exemption in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.**

The Board finds that the following conditions will ensure compliance with this section:

- "6. The applicant and/or operator shall not initiate mining and activities on the Quarry until the State Department of Geology and Mineral

Industries approves the reclamation plan and operating permit for the Quarry.”

- “7. Applicant shall obtain approval from the State Department of Geology and Mineral Industries of a reclamation plan for the property and shall implement the same.”

Therefore, the Board finds it necessary to impose these conditions on the approval of the Project.

**B. The County’s jurisdiction over mined land reclamation is limited to determining the subsequent beneficial use of mined areas, ensuring that the subsequent beneficial use is compatible with the Comprehensive Plan and Zoning and Development Ordinance, and ensuring that mine operations and reclamation activities are consistent with the program to achieve the Goal adopted as part of the Comprehensive Plan.**

The mining plan proposes to reclaim the property to elevations suitable to development consistent with County requirements in place at that time. The subject site is not designated as an Urban Reserve. Therefore, based upon what we understand today our expectation is that the intensity of development will be similar to that allowed under the current zoning.

**C. The County shall coordinate with DOGAMI to ensure compatibility between DOGAMI and the County in the following manner.**

**1. When notified by DOGAMI that an operator has applied for reclamation plan and an Operating Permit, the County shall inform DOGAMI whether Site Plan Review approval by the County is required.**

**a) If Site Plan Review approval is required, the County shall request that DOGAMI delay final action on the application for approval of the reclamation plan and issuance of the Operating Permit until after Site Plan Review approval has been granted.**

**b) If Site Plan Review approval is not required, the County shall so notify DOGAMI and the County shall review the proposed reclamation plan and Operating Permit during DOGAMI’s notice and comment period.**

**2. When reviewing a proposed reclamation plan and Operating Permit application circulated by DOGAMI, the County shall review the plan against the following criteria:**

**a) The plan provides for rehabilitation of mined land for a use specified in the Comprehensive Plan, including subsequent beneficial uses identified through the Goal 5 planning process.**

- b) **The reclamation plan and surface mining and reclamation techniques employed to carry out the plan comply with the standards of Section 708.05.**
- c) **Measures are included which will ensure that other significant Goal 5 resources determined to conflict with mining will be protected in a manner consistent with the Comprehensive Plan.**

Applicant has provided its DOGAMI Mining and Reclamation Plan Application and Preliminary Conditions of Approval. See Appendix B of the Applications. For the reasons set forth in response to OAR 660-023-0180(5)(f), the Board finds that these materials are consistent with the Site Plan Review Application and the above criteria. The Board finds that County staff will further coordinate with DOGAMI during the DOGAMI permit process to ensure that the final DOGAMI operating permit and reclamation plan satisfy the above criteria. Finally, the County finds that the requirement in Conditions 6 and 7 to obtain DOGAMI approvals before commencing Project activities ensures that the County will have the coordination opportunity required by these sections.

#### **708.07 SITE PLAN REVIEW**

**A. Site Plan Review under the Mineral and Aggregate Overlay District is a Planning Director administrative action. An application for a permit shall be processed pursuant to Subsections 1305.02(A), (E) and (G) through (I) to the extent these Subsections are consistent with the requirements of ORS 215.425 and 197.195.**

The Board finds that although Site Plan Review under the Mineral and Aggregate Overlay District is typically a Planning Director administrative action under the terms of this subsection, the Planning Commission has jurisdiction to hear applications filed concurrently with a comprehensive plan amendment application under CCZDO 1301.01.B.2. Applicant has filed the Site Plan Review Application concurrently with the PAPA Application and the Zone Change Application. Therefore, the Planning Commission properly had jurisdiction to hear the Site Plan Review Application, with the Board making the final decision for the County.

**B. The County shall approve, approve with conditions, or deny the application for the permit based on the conformance of the site plan with the standards of ZDO Sections 708, 1006, 1010, and the requirements of the site-specific program to achieve Goal 5 adopted as part of the Comprehensive Plan.**

#### **1006 – Water Supply, Sanitary Sewer, Surface Water, and Utilities Concurrency**

The Board finds that the Project satisfies the applicable requirements of CCZDO 1006 based upon the following, all of which are incorporated herein by reference:

- The reasons at pages 84-85 of the Staff Report;
- The reasons at pages 19-20 of the Site Plan Review Application narrative; and
- The reasons set forth in response to CCZDO 708.05.H above.

### **1010 - Signs**

The Applications do not request any identification signs on the exterior of the Property in conjunction with the Applications. See Site Plan Review Application narrative at 21. In order to comply with Condition 77b. and c. concerning the Tonquin Ice Age Trail crossing, Applicant is required to install safety signage that will face the interior of the Property. Based upon the testimony presented, the Board finds that the signage for the Property is consistent with CCZDO 1010.

### **Site-Specific Program to Achieve Goal 5 Adopted as part of the CCCP**

The Board finds that the Site Plan Review Application conforms with the site-specific program to achieve Goal 5 adopted as part of the CCCP because the Board has reviewed the Applications together and is issuing a single decision approving all of the Applications with a common set of conditions. Accordingly, the Site Plan Review Application necessarily conforms with the PAPA Application and the Zone Change Application.

## **OTHER ISSUES RAISED DURING THE LOCAL PROCEEDINGS**

### **Impacts to Property Values**

Further, although several area residents expressed concern that development of the Project would adversely affect their property values, the Board denies this contention for two reasons. First, the testimony from area residents was speculative and not supported by any analysis or expert testimony. Second, although the Board appreciates the residents' concerns, this issue is not directed at an applicable approval criterion. Accordingly, the Board cannot make a decision to deny or condition the Project based upon potential impacts to property values. See *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) (error to deny application based upon factor that was not applicable approval criterion).

### **Impacts Caused by Existing Mines**

Although several residents testified to adverse impacts caused by existing mines in the vicinity of the Project, the Board finds that this testimony alone does not constitute grounds to deny or further condition the Applications. Although the Board finds the testimony of these residents to be credible, the Board also finds that several of these mines were approved many years ago, under separate criteria, subject to less restrictive conditions, and by a different jurisdiction (Washington County). See testimony of Steve

Pfeiffer at Board public hearing. Further, the Board finds that it is possible that one or more of these mines is not in compliance with conditions that were imposed. As such, the Board finds that these mines are not comparable to the Project and are not a reliable indicator of the impacts of the Project. Further, the Board finds that, in any event, the Project is heavily conditioned to ensure that it satisfies all applicable criteria and minimizes any potential significant conflicts. Therefore, the Board denies the residents' contentions on this issue.

### **Blasting Impacts (Other than Noise)**

Although several area residents expressed concern about blasting at the Project causing vibration, startling of people or animals, or private property damage, the Board denies these contentions as speculative. Further, to the extent that opponents' testimony is based upon their experience with other mines in the area, the Board denies these contentions for the reasons explained above regarding impacts associated with other mines.

Further, the Board finds that Mr. Wallace has opined that, subject to compliance with the Project blasting plan and providing notice of blasting events, blasting-induced impacts will not exceed applicable federal and state standards and will operate with minimal impact on neighbors. See Letter from Jerry Wallace, undated (Exhibit 88). Mr. Wallace has outlined detailed procedures and limitations on blasting at the Project, including a requirement that blasting only occur on weekdays between 9am and 4pm, providing contact numbers to neighbors, and establishing protocol for drilling, loading, and delaying. See "A Site Specific Blasting Plan to Support the Application for a Permit to Engage in Mining Operations at the Tonquin Quarry in Clackamas County" from Wallace Technical Blasting, Inc. dated April 12, 2013 in Appendix F of the Applications. Mr. Wallace also testified that blasting at the Project would be subject to compliance with the vibration limits shown on a graph known as the Z-curve or Siskind curve, which would be below the threshold for inflicting damage on even the most fragile of civil residential construction. See Wallace letter dated November 4, 2013 (Exhibit 111).

The Board finds Mr. Wallace to be particularly credible to develop the plan and provide opinions about compliance with applicable standards because Mr. Wallace has nearly 40 years of experience as a blaster, including working as a blasting superintendent for a contractor that performed drilling and blasting services in quarries near the Property. See undated Wallace letter (Exhibit 88).

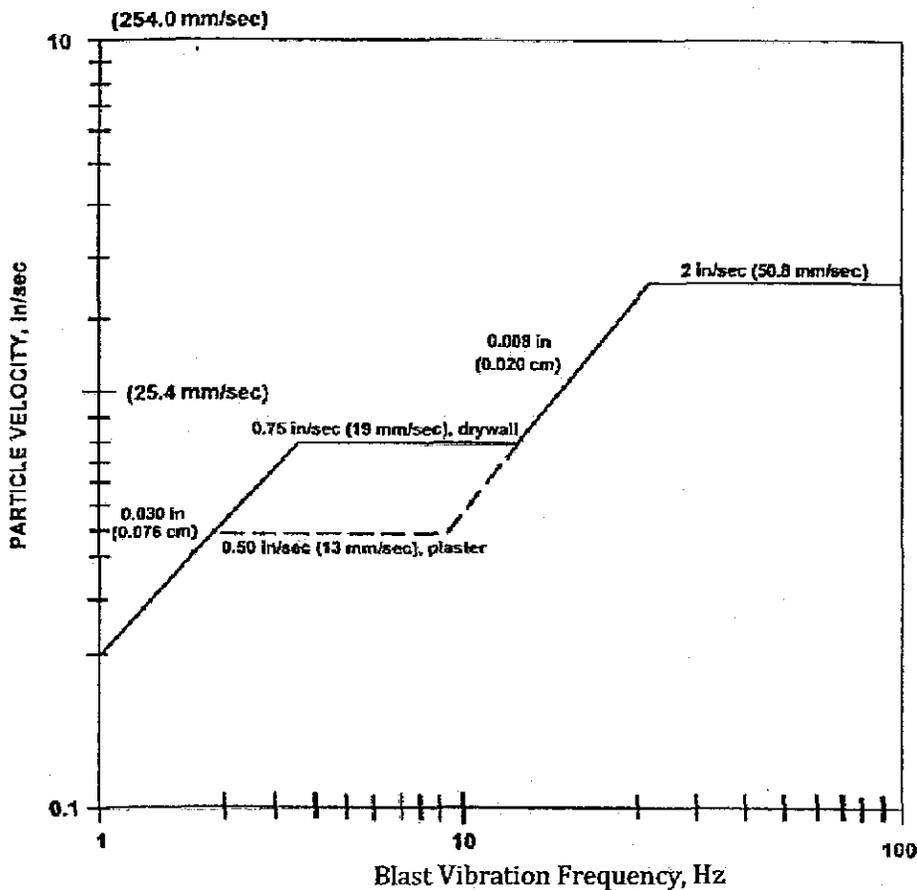
The Board finds that no credible evidence was presented to rebut Mr. Wallace's testimony or to call into question any specific aspects of the blasting plan. Therefore, the Board finds that, based upon the evidence in the whole record, a reasonable person would conclude that blasting in compliance with the blasting plan and subject to adequate advance notice will protect the public from vibration, startling of people or animals, and private property damage.

In order to ensure compliance with these requirements, the Board imposes the following three conditions of approval:

“56. The Quarry operator shall comply with the blasting plan prepared by Wallace Technical Blasting, Inc. dated April 13, 2013.”

“57. Notice of blasting events shall be posted at the Extraction Area in a manner calculated to be seen by landowners, tenants and the public at least 48 hours prior to the blasting event. In the case of ongoing blasting activities, notice shall be provided once each month for the period of blasting activities, and specify the days and hours when the blasting event is expected to occur.”

“57a. Blasting activities shall comply with the Z-curve vibration limits adopted by reference by the Oregon State Fire Marshal, as depicted in the following figure:



Additionally, although some opponents expressed concern that blasting could cause damage to the Kinder-Morgan pipeline that traverses the Property, the Board denies this contention as speculative. Instead, the Board finds that blasting can safely be conducted within 300 feet of the pipeline, subject to complying with specific guidelines, including providing adequate advance notice to Kinder Morgan of each blast and locating blasts outside of the pipeline right-of-way. As support for this conclusion, the Board relies upon testimony from Don Quinn, Kinder Morgan Manager for Pipeline Relocations outlining "reasonable precautionary measures for the protection of the health and safety of the Public, the environment, and our pipelines." See October 7, 2010 Letter from Don Quinn and attachment set forth at Divider C of the Applications. The Board finds that no credible evidence was presented to rebut Kinder Morgan's testimony. Therefore, the Board finds that, based upon the evidence in the whole record, a reasonable person would conclude that blasting in compliance with the Kinder Morgan guidelines would provide reasonable precautions against damage to the pipeline and related concerns for public safety.

In order to ensure compliance with Kinder Morgan's requirements, the Board imposes the following condition of approval:

"12. Unless otherwise agreed to by Kinder Morgan, the quarry operator shall comply with the recommended guidelines dated October 7, 2010 (including attachment) provided by Kinder Morgan for blasting within 300 feet of their pipeline."

As conditioned, the Board finds that the Project addresses the residents' concerns about blasting impacts (other than noise).

### **Conditional Use Permit Proceedings**

The opponents contend that the County Hearings Officer's findings concerning impacts to wetlands and wildlife from the previous conditional use proceedings for an aggregate mine on the Property are persuasive authority for how issues should be addressed in these proceedings. The Board denies these contentions. The Board finds that the earlier conditional use proceeding was a separate proceeding, subject to a different set of approval criteria, a different local decision-making process, and a different record. Accordingly, the Board finds that, in general, how specific issues were decided in the conditional use proceedings is not relevant to the instant Applications. For the reasons set forth in these findings, the Board finds that the Applications, as conditioned, satisfy all applicable approval criteria related to these proceedings.

### **Use of Clean Fill Material During Reclamation**

Although the Planning Commission debated whether the Applicant could ensure that only clean fill material would be imported to the Property during the reclamation process, the Board finds that it is feasible for the Applicant to comply with applicable

DEQ and DOGAMI standards regarding importation of clean fill, subject to imposing the following condition:

“7. The applicant and/or operator shall obtain approval from DOGAMI of a reclamation plan for the subject property and shall implement same.”

As support for its conclusion, the Board relies upon the testimony of the Applicant, which explained the applicable DEQ standard, the State’s role in enforcing that standard, and practices that would be implemented at the Project to monitor and manage fill importation, including procedures for addressing fill material that does not qualify as clean. See Letter from Matt Wellner dated October 21, 2013 (Exhibit 89). The Board finds that no opponents presented testimony that undermined this testimony. Therefore, the Board finds that, based upon the evidence in the whole record, a reasonable person would conclude that it is feasible for the Applicant to comply with applicable DEQ standards regarding importation of clean fill to the Project.

### **Easement for Portion of Wetland C on Kramer Property**

Although Jim Kramer contends that because he was required to dedicate a portion of Wetland C to the public for conservation purposes, the Applicant should be required to do the same as to the portion of Wetland C on the Property, the Board denies this contention for two reasons. First, the Board finds that Mr. Kramer’s dedication occurred in a separate proceeding (a land division), which was subject to different approval criteria and review procedures. Second, since the time of Mr. Kramer’s dedication, the Board finds that LUBA has held that the County cannot require the dedication of a conservation easement on private property to the public without compensation unless there are findings demonstrating that the exaction of the easement is roughly proportional to the projected impact of the Project. *Tonquin Holdings, LLC v. Clackamas County*, 64 Or LUBA 68 (2011). The record does not include any evidence that would support such findings in this case. Therefore, the Board denies Mr. Kramer’s contentions on this issue.

Further, although Ms. Madden contends that the County’s approval of the Applications could cause the County to be liable if the Kramer wetland easement is violated, the Board denies this contention for two reasons. First, Ms. Madden’s contention is speculative and refuted by the evidence in the record, which, as explained above, demonstrates that development of the Project consistent with the conditions of approval will minimize any significant conflicts with off-site natural resources. Second, any action concerning the easement is outside the scope of this proceeding. Therefore, the Board denies Ms. Madden’s contentions on this issue.

### **Street Sweeping**

The Board finds that there is a reasonable risk that trucks and other vehicles leaving the Project will track dirt onto area roadways. Although the Applicant has already proposed, and the Board has required, a number of dust control measures, such as watering the

main facility access road (Condition 71), maintaining a truck wheel wash system for exiting trucks (Condition 72), requiring watering of on-site surfaces whenever visible dust emissions are observed (Condition 73), and requiring use of water sprayers to control dust emissions from crushers and screens (Condition 74), the Board finds that an additional condition of approval is warranted to protect public road surfaces:

“74a. Upon commencement of quarry operations, Morgan Road shall be cleaned with a street sweeper, not less than twice a month within the improved right-of-way between the site entrance and the Morgan Road/Tonquin Road intersection. Upon commencement of reclamation activities, street sweeping shall occur in this same area once a week.”

### **SUMMARY AND CONCLUSION**

Based upon the cited and incorporated evidence and argument and the findings of fact and conclusions of law stated above, the Board finds that the Applications, as conditioned, satisfy all applicable approval criteria. Therefore, the Board approves the Applications, subject to the conditions set forth in Exhibit A of the adopting order of the Board of County Commissioners.



GARY SCHMIDT  
DIRECTOR

PUBLIC AND GOVERNMENT AFFAIRS  
PUBLIC SERVICES BUILDING  
2051 KAEN ROAD OREGON CITY, OR 97045

February 27, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

Resolution regarding Sea Lions at Willamette Falls

<b>Purpose/Outcomes</b>	To urge federal and state legislators and agencies to actively manage problem sea lions near Willamette Falls and develop a long-term strategy to reduce sea lion predation on adult salmon, steelhead, sturgeon and lamprey in the Willamette River, especially near the Willamette Falls.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Gary Schmidt, Public and Government Affairs, 503-742-5908
<b>Contract No.</b>	None

**BACKGROUND:**

The Willamette River at Oregon City is one of the most vibrant salmon fisheries in Oregon and has a substantial economic impact to the local community. In recent years, California and Steller sea lions have affected the native runs of Upper Willamette Spring Chinook and steelhead as well as sturgeon and lamprey, all at the Willamette Falls. The sea lions are negatively impacting the local economy, tourism, recreation and public safety as the sea lions become more aggressive and conflict with sport fishers and other river users.

California sea lions now number beyond their biologically sustainable level and Steller sea lions were removed from the Endangered Species Act in 2013. Sea lions remain protected under the Marine Mammal Protection Act, preventing local public safety officers and wildlife managers from providing sound wildlife management in the urban setting. In 2013 the Ninth Circuit Court of Appeals ruled that eliminating a certain number of problem sea lions at Bonneville Dam is justified to conserve imperiled Pacific Salmon species.

**RECOMMENDATION:**

Staff recommends the Board approve the attached resolution calling on state and federal legislators to actively manage problem sea lions near Willamette Falls.

Respectfully submitted,

  
Gary Schmidt, Director

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

**A Resolution in the  
Matter of the Sea Lions at  
Willamette Falls**



**Resolution No.  
Page 1 of 2**

**WHEREAS**, the Willamette River at Oregon City is one of the most vibrant salmon fisheries in Oregon, which has a substantial economic impact to the local community;

**WHEREAS**, California and Steller sea lion populations have increased significantly at the natural bottleneck that is Willamette Falls;

**WHEREAS**, California sea lions now number beyond their biologically sustainable level and Steller sea lions were removed from the Endangered Species Act in 2013;

**WHEREAS**, sea lions remain protected under the Marine Mammal Protection Act, preventing local public safety officers and wildlife managers from providing sound wildlife management in the urban setting;

**WHEREAS**, sea lion predation on Upper Willamette Chinook salmon, steelhead, sturgeon, and lamprey at Willamette Falls is significant;

**WHEREAS**, native runs of Upper Willamette Spring Chinook and Upper Willamette Winter Steelhead are listed as threatened on the Endangered Species List;

**WHEREAS**, sea lions near Willamette Falls are negatively impacting the local economy, tourism, recreation, and public safety as they become more aggressive and conflict more regularly with sport fishers and other river users;

**WHEREAS**, non-lethal hazing methods have been shown to be unsuccessful at reducing the numbers of sea lions or the amount of their predation;

**WHEREAS**, the Ninth Circuit Court of Appeals ruled in 2013 that eliminating a certain number of problem sea lions at Bonneville Dam is justified to conserve imperiled Pacific salmon species;

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

**A Resolution in the  
Matter of the Sea Lions  
at Willamette Falls**



**Resolution No.  
Page 2 of 2**

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

1. Clackamas County urges its federal delegation to support efforts to authorize the State of Oregon, in conjunction with the National Oceanic and Atmospheric Administration (NOAA), to actively manage problem sea lions near Willamette Falls.
2. Clackamas County urges its federal delegation to direct NOAA, in conjunction with state and local officials, to develop a long-term strategy to reduce sea lion predation on adult salmon, steelhead, sturgeon, and lamprey in the Willamette River and especially near Willamette Falls.

**DATED** this 27<sup>th</sup> day of February, 2014

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

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



Beyond clean water.

Water Quality Protection  
Surface Water Management  
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.  
Director

February 27, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

Adoption of an Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Milwaukie Regarding Access and Development Near the Kellogg Creek Treatment Plant

<b>Purpose/Outcomes</b>	Adoption of Agreement, sale of easement to City of Milwaukie
<b>Dollar Amount and Fiscal Impact</b>	Payment to CCSD#1 of \$63,200 over 3 years.
<b>Funding Source</b>	Not Applicable
<b>Safety Impact</b>	Possible slight increase of challenges for Kellogg truck traffic; mitigated as best as possible by the Agreement.
<b>Duration</b>	Perpetual unless agreement and easement are terminated.
<b>Previous Board Action</b>	Study session discussion on February 18, 2014 and February 25, 2014.
<b>Contact Person</b>	Chris Storey, Assistant County Counsel – 503-742-4623
<b>Contract No.</b>	N/A

**BACKGROUND**

Clackamas County Service District No. 1 ("CCSD#1") owns the Kellogg Creek Wastewater Treatment Plant ("Kellogg") located on Milwaukie's waterfront next to their Riverside Park ("Park"). In 2012 Milwaukie sought to begin renovations to the Park and CCSD#1 was asked by the City to sell an easement to support those renovations. District staff has worked with the City to ameliorate or mitigate any potential issues arising from the redevelopment's impact on the Kellogg Plant, including parking for Kellogg Plant staff and visitors, ingress and egress of plant vehicular traffic, code enforcement and consideration for the sale of the easement. A team of staff led by Commissioner Savas has negotiated with the City and those issues have been resolved and are reflected in the proposed intergovernmental agreement attached hereto.

**RECOMMENDATION**

Staff recommends the Board authorize the Chair to execute the proposed intergovernmental agreement and authorize staff to execute such other ancillary documents as may be necessary to effectuate the purposes thereto.

Respectfully submitted,

Elizabeth Garcia  
Interim Director

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1  
AND  
THE CITY OF MILWAUKIE  
REGARDING ACCESS AND DEVELOPMENT  
NEAR KELLOGG CREEK PLANT

THIS INTERGOVERNMENTAL AGREEMENT REGARDING ACCESS AND DEVELOPMENT NEAR KELLOGG CREEK PLANT (this "Agreement") is effective as of the 28th day of February, 2014 (the "Effective Date") by and between Clackamas County Service District No. 1, a county service district ("CCSD#1") and the City of Milwaukie, an Oregon municipality ("City"), each also individually referred to as "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, the Parties are authorized to enter into agreements regarding the provision of services to their residents, customers and service areas pursuant to their respective charter or principal acts and ORS 190.010; and

WHEREAS, the City owns and operates a public park located west of Highway 99E between Adams Street (on the south) and Harrison Street (to the north) ("Park"), and is finalizing plans for significant improvements to the Park ("Park Improvements"); and

WHEREAS, CCSD#1 owns and operates a sewage treatment facility ("Kellogg Plant") and land located south of and adjacent to the Park ("CCSD#1 Property"), together with an easement over the Park property which allows CCSD#1 to access Highway 99E pursuant to the easement accepted pursuant to Board Order 72-469 as recorded in real property records of Clackamas County (the "CCSD#1 Easement"); and

WHEREAS, the City desires to enter into an agreement with CCSD#1 which allows the City to utilize a portion of the CCSD#1 Property to, among other things, support reconfiguration and redevelopment of Park; and

WHEREAS, CCSD#1 is willing to accommodate City's requests on the terms and conditions set forth herein;

**NOW THEREFORE**, the Parties hereby agree as follows:

1. Access. CCSD#1 agrees that City may use a portion of CCSD#1 Property as provided in this Agreement and in the Easement granted to the City pursuant to Section 7 below (the "City Easement") as part of its Park redevelopment effort. Such agreement is conditioned on the City compliance with the other terms set forth herein, including access and traffic flow. The parties agree that the design of the Park upon which this Agreement

is based is as set forth on Exhibit A, which CCSD#1 hereby approves. The Parties agree that the traffic flow pattern within the CCSD#1 Easement area and City Easement area shall be as set forth on Exhibit B, including but not limited to ingress/egress plans for the industrial truck traffic coming to and from the Kellogg Plant. The City agrees it will not make any changes to the access, traffic flow, parking, or related site design issues within the CCSD#1 Easement area or the City Easement area without prior consultation with, and consent from, CCSD#1, which consent will not be unreasonably withheld, conditioned or delayed. City shall be responsible to secure any and all third-party easements, permits or related permissions that may be required to implement the Park Improvements within the CCSD#1 Easement and City Easement areas and adjacent rights-of-way (collectively, the “Third-Party Approvals”). To the extent they apply to the CCSD#1 Property, such Third-Party Approvals shall be in the name and for the benefit of CCSD#1.

2. Easement Area Management. ~~The Parties agree that the traffic flow pattern within the CCSD#1 Easement area and City Easement area shall be as set forth on Exhibit B, including but not limited to ingress/egress plans for the industrial truck traffic coming to and from the Kellogg Plant.~~ CCSD#1 shall have the designated reserved parking spaces as depicted on Exhibit BA (“CCSD#1 Exclusive Parking Spaces”). The City covenants and agrees to (i) place signs which designate the CCSD#1 Exclusive Parking Spaces as reserved for CCSD#1 use at all times; (ii) enforce City driving, parking, and other ordinances strictly in the CCSD#1 Easement area and City Easement area portions of the Park to ensure safe vehicular traffic by CCSD#1 vehicles; and (iii) respond promptly when notified by CCSD#1 staff of a problem regarding the foregoing. City’s obligation to respond to parking issues shall not exceed its normal ticket enforcement efforts equal to those undertaken for the downtown area of the City; provided, however, that police or other appropriate personnel shall respond if there is blockage of access to or from the Kellogg Plant. CCSD#1 shall have the right to post the CCSD#1 Exclusive Parking Spaces with tow away signs and, without limiting the foregoing, may enforce such postings to the full extent permitted by law. CCSD#1 acknowledges that the City may contract with a third party to perform maintenance services in the Park. If the City does so, its agreement with such contractor shall expressly require the contractor to perform its work consistent with the terms and conditions of this Agreement.

3. CCSD#1 Actions. CCSD#1 agrees that it shall withdraw its objection letter to the City’s pending US Army Corp of Engineers (“ACOE”) permit application. A copy of the withdrawal letter is attached hereto as Exhibit C; the original thereof shall be signed by CCSD#1 simultaneously upon execution of this Agreement and delivered to the City. The City is authorized to deliver the letter to the ACOE. As part of the Park Improvements the City must obtain (i) an access permit from the Oregon Department of Transportation (“ODOT”) allowing construction of a new access point onto Highway 99E at Adams Street; and (ii) the Third-Party Approvals. CCSD#1 agrees to work with City staff to execute the ODOT access change letter request. CCSD#1 shall also work with the City and any third parties in good faith to negotiate and resolve any

and all remaining outstanding issues relating to this project to the mutual satisfaction of all parties.

4. Park Bridge. The parties agree that the current bridge located within the CCSD#1 Easement (“Park Bridge”) is essential for appropriate traffic flow and safe travel both for the Park and Kellogg Plant traffic. To the extent the Park Bridge is damaged by acts of CCSD#1 such damage shall be repaired and paid by CCSD#1; to the extent the Park Bridge is damaged by the City or users of the Park, such damage shall be repaired and paid for by the City. Results of an ODOT-funded bridge inspection and load rating currently underway (the “Bridge Report”) will be reviewed by the City and CCSD#1 when completed. Within six (6) months of receipt of the Bridge Report, the parties will use the Bridge Report as a basis to negotiate in good faith to reach agreement on the percentage that each party will pay toward the capital expenses that may be needed to maintain, repair, upgrade, and if necessary replace, the Park Bridge. At such time as the Park Bridge requires capital investment to maintain functionality, the parties will use the referenced percentages to determine the share of expenses for such repairs and/or upgrades.

5. 99E Bridge. CCSD#1 acknowledges that the existing bridge structure owned and operated by the City which allows passage of Kellogg Creek beneath Highway 99 (“99E Bridge”) may require repair and replacement at some time during the term of this Agreement. CCSD#1 consents to any and all activities associated with such repair of the 99E Bridge at the City’s expense so long as a reasonable means of vehicular access (including access for CCSD#1 trucks and personnel), is retained or provided between the Kellogg Plant and Highway 99E. In the event that access to the traffic signal at Washington St. is unavailable, the access south of Kellogg Creek will remain open and accessible to CCSD#1 trucks and personnel in such a manner that the normal operations of the Kellogg Plant are not impaired.

6. Construction. CCSD#1 acknowledge that there may be disruptions due to construction of the Park Improvements. City agrees to minimize such disruptions, to coordinate with Kellogg Plant staff to prevent any material impact on treatment operations and biosolid or other vehicular traffic. For the purposes of the preceding sentence, “material” shall mean obstructing or substantially delaying the daily ingress and egress of CCSD#1 staff, equipment or agents to and from the Kellogg Plant. All construction work shall generally be at City’s expense and timed to minimize impacts on CCSD#1 traffic, and the parties acknowledge that the only District funding that may be associated with the Park Improvements and access change shall come from the Good Neighbor Fund as defined in the service agreement between the Parties dated December 20, 2012. District funding for Park Bridge repair or replacement projects will come from sources other than the Good Neighbor Fund.

7. Easements. City and CCSD#1 each acknowledge that the City needs an easement over a portion of the CCSD#1 Property to effectuate the Park plan set forth on Exhibit A (the “City Easement”), and that CCSD#1 as a special purpose municipal entity must

receive appropriate consideration for such Easement. A copy of the City Easement is attached to this Agreement as Exhibit D; the original thereof shall be signed by CCSD#1 simultaneously upon execution of this Agreement and delivered to the City. The City will cause the City Easement to be recorded in the deed records of Clackamas County at the City's expense. As compensation for the City Easement the City agrees to pay CCSD#1 the cash sum of Sixty-Three Thousand Two Hundred and no/100 Dollars (\$63,200.00) (the "Consideration"). The City shall pay the Consideration in two payments of Twenty-One Thousand Sixty-Six and no/100 Dollars (\$21,066.00) each, payable on March 3, 2014 and March 2, 2015, respectively, and one payment of Twenty-One Thousand Sixty-Seven and no/100 Dollars (\$21,067.00) on March 1, 2016, without any interest accruals. The full amount of the Consideration may be paid earlier without penalty at the discretion of the City.

8. Maintenance. The City agrees that, as part of the planned Park improvements, it intends to construct improvements on City Easement area located on the CCSD#1 Property, including drive aisles, parking spaces, landscaping, curbs and sidewalks. The City shall be responsible for all maintenance and repair relating to all such improvements for the life of the City Easement.

9. Breach. In the case of a breach of the City Easement, the remedies shall be as set forth therein. In the case of breach of this Agreement by either party, the non-breaching party shall notify the breaching party, who shall have ten (10) business days to remedy such breach, unless such breach cannot reasonably be remedied within such time period, in which case the breaching party shall commence a remedy within such ten (10)-day period and continuously and diligently pursue the remedy to completion. If such breach is not remedied, or there is a pattern of failure to perform promised obligations under this Agreement or the City Easement, the non-breaching party may (i) exercise any remedy available to it in law or equity, and (ii) at its discretion, undertake self-help measures and the breaching party shall be responsible to pay all costs relating to such self-help, including staff time and reasonable attorney's fees arising therefrom.

10. Term; Creates Covenant Running with Land. This Agreement shall be effective as of execution and shall remain in effect for such time as the Park Improvements (as they may be modified from time-to-time as permitted hereunder), are located on the CCSD#1 Property. This Agreement shall be a covenant running with the land as to both the City Property on which the Park is located and as to the CCSD#1 Property. The parties agree that this Agreement shall be recorded in the deed records of Clackamas County, Oregon. It shall terminate only upon termination of the City Easement, which may only be done by (i) mutual consent of the parties or (ii) upon the City ceasing to use CCSD#1 Property for park purposes as described in Exhibit A hereto.

11. Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement in order to provide and secure to the other Party the full and complete enjoyment of rights and privileges hereunder.

12. Responsible Parties. To the extent any third party makes any claim or brings any action, suit or proceeding, including, but not limited to, a claim alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) with respect to the Park, the Park Improvements, or other issue or obligation arising under this Agreement against CCSD#1 or City or their elected officials, employees or agents, the City shall defend such Third Party Claim at its sole expense and hold CCSD#1 harmless from any loss, damages, expenses (including attorney’s fees), judgments, fines or settlement amounts arising therefrom, except when such Third Party Claim directly relates solely to the actions of CCSD#1 staff, agents, or vehicles (a “CCSD#1 Claim”), in which case CCSD#1 shall have the sole obligation to defend and pay such CCSD#1 Claim, and shall hold the City harmless from any loss, damages, expenses (including attorney fees), judgments, fines, or settlement amounts arising therefrom. If the Third Party Claim may have an element of a CCSD#1 Claim but is not solely attributable to CCSD#1 actions, then the parties shall confer and devise a claim-appropriate defense and each party shall pay their respective share as found as part of a judgment or settlement. The City’s or CCSD#1’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if such party had sole liability in the proceeding; provided, however, that such cap shall not transfer liability to the indemnified party and to the extent a court or other authority imposes liability beyond the Oregon law cap, the indemnifying party shall be responsible to make the indemnified party whole.

13. Severability and Waiver. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired in any way. One or more waivers by either Party of any provision, term, condition or covenant shall not be construed by the other Party as a waiver of subsequent breach of the same by the other Party.

14. Amendment. The Agreement may be amended at any time, but only by mutual written agreement of both parties.

15. No Third-Party Beneficiaries. The Parties to this Agreement and their successors and permitted assigns are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons.

16. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Venue in connection with any legal proceeding affecting this Agreement shall be in the Circuit Court of the State of Oregon for Clackamas County.

17. Successors and Assigns; Counterparts. This Agreement is to be binding on the successors and assigns of the Parties hereto. No assignment of this Agreement shall be effective until the assignee assumes, in writing, the obligations of the assigning Party, and delivers such written assumption to the original Party to this Agreement. This Agreement may be executed in one or more counterparts.

18. No Waiver. No failure by City or CCSD#1 to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent to a breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by either Party, and no breach by either Party, shall be waived, altered, or modified except by a written instrument executed by the non-breaching Party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

19. Cumulative Remedies. Each right and remedy provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by City or CCSD#1 of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have, pursuant to official action that the respective governing bodies duly authorized the same, caused their respective officers to execute this Agreement on their behalf on the date stated above.

CITY OF MILWAUKIE,  
a municipal corporation

CLACKAMAS COUNTY SERVICE  
DISTRICT NO. 1, a county service district

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

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

Title: Mayor

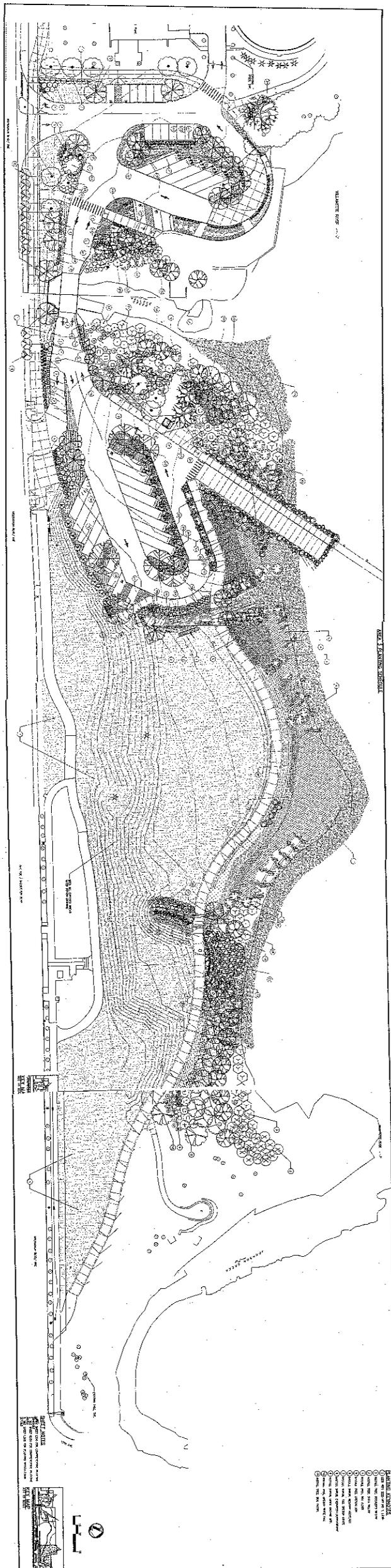
Title: Chair

ATTEST: \_\_\_\_\_

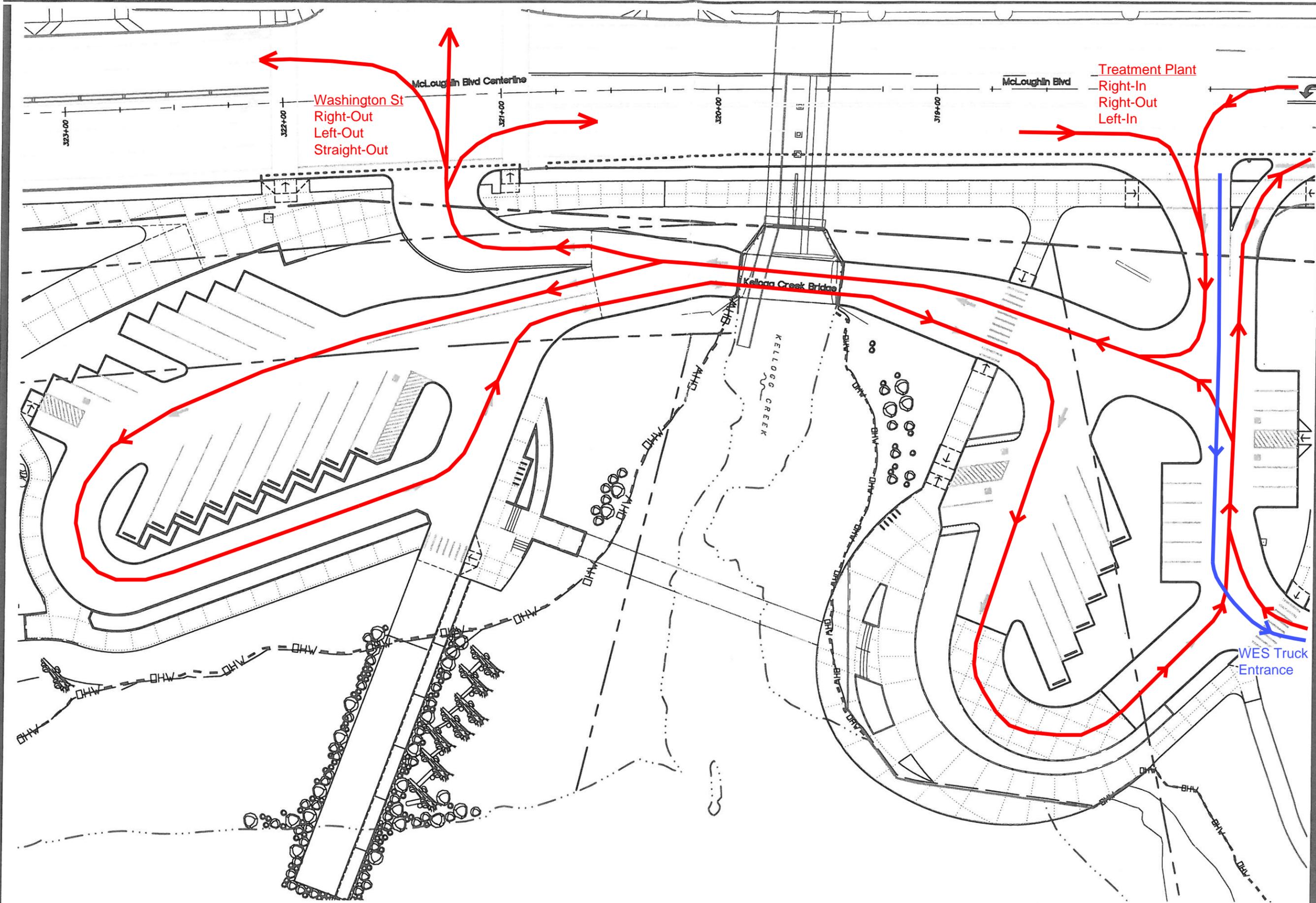
ATTEST: \_\_\_\_\_

Title: City Recorder

Title: Secretary



P:\WAEX0000018\0400CAD\CHKBRD\SDH\ECBS-5-MAEX18-C30.dwg Jun 18, 2013 - 12:20pm



**USER SOUTHBOUND EXIT  
MILWAUKIE RIVERFRONT PARK  
PARK IMPROVEMENT PROJECT**  
CITY OF MILWAUKIE,  
MILWAUKIE, OREGON

**DAVID EVANS  
AND ASSOCIATES INC.**  
2100 Southwest River Parkway  
Portland Oregon 97201  
Phone: 503.223.6663

REVISIONS: APPD.

DATE: SEPT. 1, 2009  
DESIGN:  
DRAWN:  
CHECKED:  
REVISION NUMBER:

SCALE: AS SHOWN

PROJECT NUMBER:  
MAEX0000-0018

DRAWING FILE:  
ECBS-5-MAEX18-C30.dwg

SHEET NO.

**5**  
OF 7

{date}

U.S. Army Corps of Engineers  
Attn: CENWP-OP-GP (James Holm)  
PO Box 2946  
Portland, OR 97208-2946

Re: Withdrawal of objections to permit application  
Corps of Engineers Action ID No. NWP-2009-19  
Oregon DSL No. 41713-RF

Dear Mr. Holm,

This letter follows up our January 14, 2010 letter. In that letter, Clackamas County Service District #1 (CCSD#1)—which owns the Kellogg Creek Water Pollution Control Plant on McLoughlin Boulevard (Kellogg Plant)—communicated its concerns regarding the City of Milwaukie's permit application to authorize Riverfront Park construction activity.

The purpose of this letter is to inform the Corps that CCSD#1's concerns have been addressed by the City of Milwaukie, and thus CCSD#1 withdraws its earlier objections.

Two specific developments have addressed our prior concerns. First, as to vehicular access onto, and within, CCSD#1's site, the city has developed an access flow plan. This plan adds a curb cut to McLoughlin to facilitate trucks' and personnel's entry into and exit from the Kellogg Plant. The access flow plan also contains an onsite circulation plan that should reduce potential vehicular conflicts between park users and CCSD#1 personnel to acceptable levels.

Second, as to use of CCSD#1 property for park purposes, the City and CCSD#1 have concluded negotiations allowing the City's acquisition of a park easement over CCSD#1's property. The negotiated transfer of an appropriate easement has satisfied CCSD#1's prior concerns about nonconsensual use of its property.

Thank you for the opportunity to present this communication. Please call me at (503) 742-4623 if there are any questions.

Sincerely,

Chris Storey  
Assistant County Counsel

AFTER RECORDING RETURN TO:

CITY OF MILWAUKIE  
10722 SE MAIN STREET  
MILWAUKIE OR 97222

---

*This space is reserved for recorder's use.*

### **PERMANENT PARK USE EASEMENT**

Clackamas County Service District No. 1, a Chapter 451 county service district (Grantor), hereby conveys to the City of Milwaukie, a municipal corporation (Grantee), and its successors and assigns, a nonexclusive perpetual and permanent easement for the purposes of constructing, maintaining, and operating a public park, including parking and related improvements and activities over and across the following described real property:

That tract of land described in Exhibit "A" and depicted graphically in Exhibit "B," both exhibits being incorporated herein.

The consideration paid for this Easement is the sum of \$63,200, together with other valuable consideration.

**TO HAVE AND TO HOLD** said easement to said Grantee, for the use and purpose herein above described and in accordance with and subject to the terms and conditions set forth in the Intergovernmental Agreement Regarding Access and Development near Kellogg Creek Plant, dated February 28, 2014, the terms of which are incorporated herein and which constitute covenants that run with the land and inure to the benefit of and are binding on the parties and their respective grantees, successors, and assigns.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE



**ENGINEERING PLANNING  
FORESTRY**  
13910 S.W. Galbreath Dr., Suite 100  
Sherwood, Oregon 97140  
Phone: (503) 925-8799  
Fax: (503) 925-8969  
AKS JOB # 3836



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AKS Group of Companies:  
SHERWOOD, OREGON  
SALEM, OREGON  
VANCOUVER, WASHINGTON  
[www.aks-eng.com](http://www.aks-eng.com)

## **EXHIBIT A**

Access Easement

A tract of land lying in the Northeast One-Quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, City of Milwaukie, Clackamas County, Oregon being more particularly described as follows:

Beginning at the northeast corner of Document Number 70-27388, Clackamas County Deed Records, said point bearing South 81°53'00" West 321.18 feet from the northeast corner of Block 39 of the plat of "Plan of the Town of Milwaukie", Clackamas County Plat Records; thence South 04°24'15" East 120.94 feet to a point; thence South 81°27'04" West 352.30 feet to the ordinary low water line of the Willamette River as defined by Elevation 5.0 feet (NGVD29); thence following said ordinary low water line North 31°39'41" East 16.56 feet; thence North 39°05'52" East 54.09 feet; thence North 52°36'37" East 34.96 feet to the westerly extension of the north line of Document Number 70-27388, Clackamas County Deed Records; thence along said westerly extension of said north line North 70°20'20" East 50.38 feet to the northwest corner thereof; thence along said north line North 70°20'20" East 235.1 feet to the point of beginning.

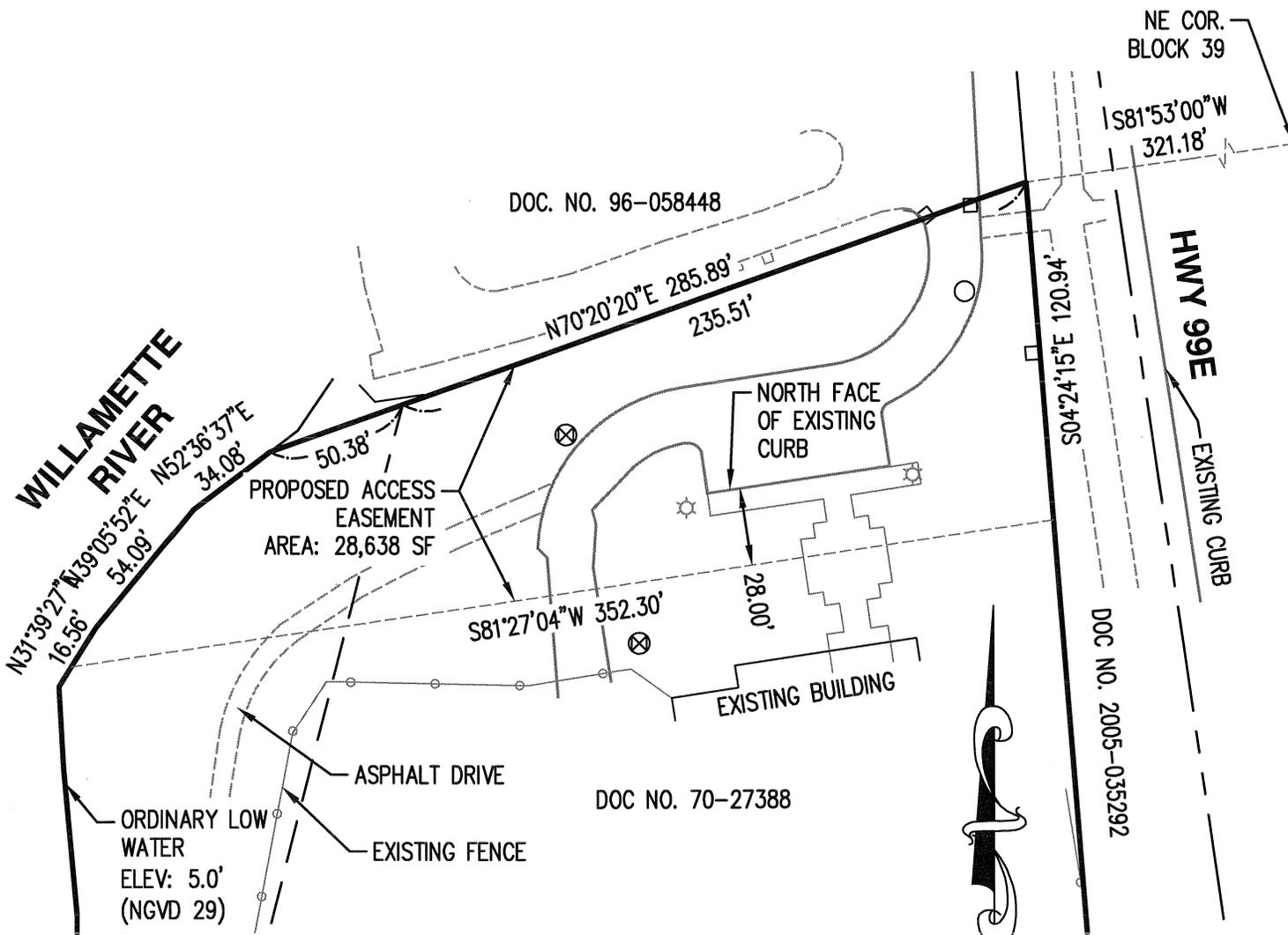
The above described tract of land contains 28,638 square feet, more or less.



# EXHIBIT B

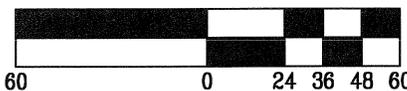
## ACCESS EASEMENT

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4,  
SEC. 35, T1S, R1E, W.M., CITY OF MILWAUKIE,  
CLACKAMAS COUNTY, OREGON



PREPARED FOR  
CITY OF MILWAUKIE  
6101 SE JOHNSON CREEK BLVD.  
MILWAUKIE, OR 97206  
11-15-13

SCALE 1" = 60 FEET



**REGISTERED  
PROFESSIONAL  
LAND SURVEYOR**

*[Signature]*  
**OREGON  
JANUARY 11, 2005  
ROBERT D. RETTIG  
60124LS  
RENEWS: 12/31/14**

RIVERFRONT PARK	
JOB NAME:	ACCESS EASEMENT
JOB NUMBER:	3836
DRAWN BY:	MEB
CHECKED BY:	RDR
DWG NO.:	3836CXMPL

AKS ENGINEERING AND FORESTRY, LLC  
13910 SW GALBREATH DR  
SUITE 100  
SHERWOOD, OR 97140  
PHONE: 503.925.8799  
FAX: 503.925.8969



**ENGINEERING · PLANNING · SURVEYING  
FORESTRY · LANDSCAPE ARCHITECTURE**

February 27, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Gladstone School District #115  
for Child Resource Coordinator services

<b>Purpose/Outcomes</b>	Gladstone School District contracts with Children, Youth and Families Division to oversee the Child Resource Coordinator services being delivered at the Gladstone School District. The Child Resource Coordinator's overall purpose is to assist high risk families prepare their child for kindergarten, increase family stability, and to increase system coordination and efficacy. Eighty (80) children and their families will be served under this contract.
<b>Dollar Amount and Fiscal Impact</b>	Contract provides revenue of \$50,000 - no County General Funds are involved. These funds will be contracted out to NW Family Services, a local non-profit.
<b>Funding Source</b>	Gladstone School District #115
<b>Safety Impact</b>	N/A
<b>Duration</b>	Effective January 1, 2014 and terminates on December 31, 2104
<b>Previous Board Action</b>	
<b>Contact Person</b>	Rodney A. Cook
<b>Contract No.</b>	6573

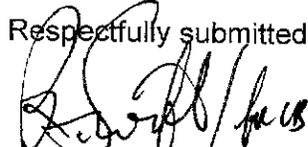
**BACKGROUND:**

The Children, Youth and Family Division (CYF) of the Health, Housing & Human Services Department (H3S) request the approval of an Intergovernmental Agreement (IGA) with Gladstone School District. This is a renewal of an IGA that currently exists between Gladstone School District and H3S/CYF to provide Child Resource Coordinator services for the District. Funds from this IGA are disbursed to a local non-profit and do not support County staff positions. There are no changes to the contract template previously reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approval of this IGA renewal and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
Cindy Becker, Director

# GLADSTONE SCHOOL DISTRICT NO. 115

17789 Webster Road - Gladstone, Oregon 97027  
503-655-2777 [www.gladstone.k12.or.us](http://www.gladstone.k12.or.us)

## STANDARD INTERGOVERNMENTAL AGREEMENT (IGA)

This Intergovernmental Agreement ("Agreement") is between **GLADSTONE SCHOOL DISTRICT** ("GSD") and **CLACKAMAS COUNTY** ("COUNTY") (collectively, "the Parties") pursuant to authority granted in ORS Chapter 190.

**Scope of Work.** The Parties agree as follows: The COUNTY will provide Child Resource Coordinator Services for the District as outline in Exhibit A and Exhibit B.

**Term of Agreement.** The initial Agreement term will be January 1, 2014 through December 31, 2014, when the Scope of Work concludes, or one or both Parties terminate this Agreement, whichever occurs first.

**Agreement Amount.** The agreement for services performed shall not exceed \$50,000

**Payment.** As compensation for such services, COUNTY will invoice GSD monthly for services performed. GSD will pay the COUNTY within 15 days of receipt of invoice for authorized services pursuant to this Agreement.

---

## STANDARD TERMS AND CONDITIONS

- 1. Subcontracts and Assignment.** Neither party will assign any part of the Agreement without the prior written approval of the other party, and any purported assignment without written approval will be void. Despite this prohibition on assignment, COUNTY may subcontract, in whole or in part, its performance under this Agreement.
- 2. Termination.** This Agreement may be terminated (a) by mutual agreement at any time or (b) by GSD, for cause or convenience, upon not less than three calendar days' advance written notice. Upon termination, the GSD shall compensate COUNTY for all Services authorized by GSD and properly performed through the date of termination plus any expenses directly attributable to the termination. In no event shall COUNTY be entitled to compensation for overhead and profit on the terminated Services or consequential damages arising out of such termination.
- 3. Access to Records.** Each party will have access to the books, documents and other records of the other which are related to this Agreement for the purpose of examination, copying and audit, unless otherwise limited by law.
- 4. Compliance with Applicable Law.** Each party will comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders.

5. **COUNTY's Defense and Indemnification.** COUNTY agrees to indemnify, hold harmless, reimburse, and defend GSD, and its officers, agents, and employees, from, for, and against all claims, suits, actions, damages, and expenses related to or arising out of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of COUNTY, its employees, subconsultants, or anyone for whose acts COUNTY is responsible. This provision is subject to the limitations if applicable set forth in Article XI, Section 10 of the Oregon Constitution and in the Oregon Tort Claims Act, ORS 30.260 to 30.300.
6. **GSD's Defense and Indemnification.** GSD agrees to indemnify, hold harmless, reimburse, and defend COUNTY, and its officers, agents, and employees, from, for, and against all claims, suits, actions, damages, and expenses related to or arising out of this Agreement, but only to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of GSD, its employees, subconsultants, or anyone for whose acts GSD is responsible. This provision is subject to the limitations if applicable set forth in Article XI, Section 10 of the Oregon Constitution and in the Oregon Tort Claims Act, ORS 30.260 to 30.300.
7. **Force Majeure.** In no event shall a party have any claim against the other party for any failure of performance by such party, if such failure of performance is caused by or the result solely of causes beyond the reasonable control of such other party, including, but not limited to: damage caused by a third party, electrical storms, fire, heavy rain, heavy snow, other acts of God, or other natural catastrophe; laws, orders, rules, regulations, directions, or action of governmental authorities, or of any civil or military authority, national emergency, or lockout, labor shortage, or materials shortage.
8. **Compliance with Applicable Law.** Each party will comply with all applicable laws, statutes, codes, ordinances, rules, regulations, and lawful orders.
9. **Insurance.** COUNTY self-insurance will satisfy the requirements of this section and COUNTY agrees to maintain an actuarially sound self-insurance fund for that purpose.
10. **Governing Law; Arbitration.** The provisions of this Agreement will be construed in accordance with the laws of the State of Oregon. All claims, disputes and other matters in question between GSD and COUNTY arising out of or relating to this Agreement will be subject to binding arbitration in accordance with ORS 190.710 to 190.800.
11. **Entire Contract.** This Agreement constitutes the entire, legally-binding contract between the Parties regarding its subject matter. This Agreement supersedes any and all prior or contemporaneous understandings, agreements, or representations, whether oral or written, not specified herein.
12. **Waiver; Severability.** The failure of either party to enforce any provision of this Agreement will not constitute a waiver by that party of that or any other provision of this Agreement. If any term or provision of this Agreement is determined to be illegal, in conflict with any law, void, or otherwise unenforceable, and if the essential terms and provisions of this Agreement remain unaffected, then the validity of the remaining terms

and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.

13. **Modification.** No waiver, consent, modification, or change of terms of this Agreement will bind either party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, will be effective only in the specific instance and for the specific purpose given.
14. **Notices.** Any notice or other communication regarding this Agreement will be served in one of the following manners: (1) personal delivery, (2) facsimile transmission, or (3) delivery by courier or messenger service that maintains records of its deliveries.
15. **Signatures.** This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute one and the same instrument. A facsimile, PDF or other electronic signature will be considered an original. The individuals signing this Agreement certify that they are authorized to execute this Agreement on behalf of GSD and COUNTY, respectively.

I have read this contract, including all exhibits and attachments, if applicable. I certify that I have the authority to sign and enter into this contract and agree to be bound by its terms.

---

**Authorized Signature**

---

**Authorized Signature**

---

**Date**

---

**Date**

**Exhibit A****FAMILY RESOURCE COORDINATOR****Services (General Description of the position):**

The Gladstone Center for Children & Families is a great platform for better coordinating services with families through a *Family Resource Coordinator*. With eleven collaborating agencies and as the service hub for nearby schools, the GCCF sets up the opportunity for a higher level of holistic care, coordinated family supports, and integration of agencies. A *Family Resource Coordinator (FRC)* located at GCCF would receive, coordinate and expedite service referrals, and help families navigate health, education, and other human service systems. In addition, the FRC would follow-up with families and providers to ensure the brokered services have effectively met the family's needs for stability, health, and school readiness.

Families and students in the greater Gladstone/Jennings Lodge community are the primary target population. Schools and agencies collaborating with the GCCF would be the focus. Service connections would include but not be limited to clothing & food resources, a medical home, social-emotional supports, Oregon Health Plan application, well-child screen parent training, addictions counseling, mentors - tutors, support groups, child care, school attendance, pre-school, housing, respite care, employment and vocational skills, healthy recreation, advocacy with schools, and parent-child attachment.

Families are best supported through their existing provider relationships and networks. The FRC would work with the family's existing contacts such as a home visitor, teacher, counselor, medical provider, pastor, therapist or school principal in connecting and guiding the family or student to services. Some families are more isolated and have no support connections. They need more FRC direct contact, navigation, and follow-up. Furthermore, the FRC could gather specialist or utilize a multi-disciplinary team [such as a Teacher Assistance Team or Youth Services Team] to assess and work with the most isolated or struggling families

**Priorities**

Children birth to 8yr, and their families of the greater Gladstone, Jennings, Holcomb, and OakGrove communities referred from schools, clinics and agencies to;

- Improve family stability, relationships, and attachment.
- Decrease referrals to child protective services.
- Improve current health status and health trajectory longer term.
- Improve student's readiness for school, attendance, and learning success.
- Improve family skills and connections to on-going supports, care-coordinators, schools, health and social human services, and self-serve networks like 211, I-Match, and Child Care R&R.

**Essential Functions** (Duties and Responsibilities - include % of time spent on each duty when appropriate.

65% Gathering and receiving referrals from schools, agencies and providers, then promptly assessing and connecting the child/student/family to needed resources. Will help families navigate and access supports with agencies, providers, schools, community. Utilize program eligibility and information & referral processes. Catch, assess, understand, distribute, release, and follow-up with client-customers and their needed supports.

Whenever possible support families through their existing relationships with nurses, teachers, home visitors, counselors, mentors, caseworkers, school staff, et al. May coach client-customers in their relations with service providers, schools, and insurers. Does not accumulate a caseload except short term with families unconnected to any other supports.

Coordinate services for families with local and state systems of early childhood assessment and screening, childhood trauma and toxic stress, multi-domain kindergarten readiness, parent-child attachment, pre-reading strategies, pre-adolescent assets and risk factors.

Will occasionally prepare and facilitate multi-specialist staffing sessions for struggling families and students with multiple destabilizing problems. Utilize multi-specialist teams such as Teacher Assistance Teams and Youth Services Teams.

20% Building and maintaining multi-lateral professional relationships with schools, service providers, agencies, insurers, faith organization and other community supports. Utilize referral agreements, financial arrangements, collegial relations, school district arrangements. Facilitate communications and service coordination among providers to meet family, student needs. Networking, coordination, and advocacy with other early childhood FRC type positions in other multi-service centers, schools and clinics.

Policy, practice and relationship bridge building among the six sectors of the early childhood arena;

- K-3 education
- PreK market place of providers
- Pediatrics and medical homes/insurance
- Social services including housing and home visiting
- Parent education and supports
- Vocational development with young parents

10% Continuously gather and integrate comprehensive information about community resources through networks, databases, collegial relations, partnership opportunities. Utilize and teach others to use Information & Referral tools such as 211, FESN, BabyLink, I-Match, and ChildCare Resource & Referral. Join select and efficient networking organizations, and

coordinate with similar positions in schools, clinics, and agencies. Develop menu of frequently needed services including but not limited to medical homes, basic needs, parent groups vocational development, school attendance, screening, and social / emotional counseling.

- 5% Join other care-coordinators and service specialist in a Care-Coordination Outreach Team to visit and counsel with schools, health clinics, and preK providers.

February 27, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Mental Health Director's  
Designee to Authorize a Custody Hold Under ORS 426.233

<b>Purpose/Outcomes</b>	The Clackamas County Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of Jay Auslander, LPC with Cascadia, by the CCBH Director as <i>additional designee authorized under ORS 426.233.</i>
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	None
<b>Duration</b>	Effective March 6, 2014 through duration of employment
<b>Previous Board Action</b>	N/A
<b>Contact Person</b>	Martha Spiers, Mental Health Program Mgr. – Behavioral Health Division – 503-742-5833
<b>Contract No.</b>	N/A

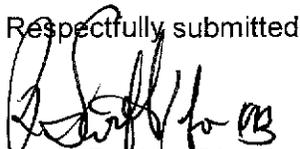
**BACKGROUND:**

The Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of additional designees authorized under ORS 426.233 (copy attached), the mental health designee will be authorized to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division.

**RECOMMENDATION:**

Staff recommends the Board approve the Board Order of Jay Auslander, LPC with Cascadia, as additional qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

Respectfully submitted,

  
Cindy Becker, Director

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

In the Matter of the Designation of  
Jay Auslander, LPC with Cascadia, as  
Mental Health Director Designee to Direct  
Peace Officer Custody Holds



ORDER NO.

This matter coming on at this time to be heard, and it appearing to this Board that Cindy Becker, Director of Health, Housing & Human Services Department, has recommended to this Board the approval of Jay Auslander, LPC with Cascadia, as additional designee of the Behavioral Health Division Director, authorized under ORS 426.233 to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division, and

This Board finds that it would be in the best interest of Clackamas County to approve said designations,

IT IS THEREFORE HEREBY ORDERED that Clackamas County approve the designation of Jay Auslander, LPC with Cascadia, as qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

ADOPTED this 27<sup>th</sup> day of February, 2014.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

**426.233 Authority of community mental health program director and of other persons; costs of transportation.** (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Oregon Health Authority;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the authority, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232;

(C) Notify a person authorized under subsection (3) of this section to take the person into custody and direct the authorized person to remove the person in custody to a hospital or nonhospital facility approved by the authority;

(D) Direct a person authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the authority to another hospital or nonhospital facility approved by the authority as provided under ORS 426.235; or

(E) Direct a person authorized under subsection (3) of this section to transport a person in custody from a facility approved by the authority to another facility approved by the authority as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must be recommended by the community mental health program director, meet the standards established by rule of the authority and be approved by the county governing body before assuming the authority permitted under subsection (1) of this section.

(3) The county governing body may, upon recommendation by the community mental health program director, authorize any person to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing a person under this subsection, the county governing body shall grant the person the authority to do the following:

(a) Accept custody from a peace officer of a person in custody under ORS 426.228;

(b) Take custody of a person upon notification by the community mental health program director under the provisions of this section;

(c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health program director;

(d) Transfer a person in custody to another person authorized under this subsection or a peace officer;

(e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health program director; and

(f) Retain a person in custody at the approved hospital or nonhospital facility until a physician makes a determination under ORS 426.232.

(4) A person authorized under subsection (3) of this section must be recommended by the community mental health program director, meet the standards established by rule of the authority and be approved by the governing body before assuming the authority granted under this section.

(5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by a person authorized under subsection (3) of this section shall be the responsibility of the county whose peace officer or community mental health program director directs the authorized person to take custody of a person and to transport the person to a facility approved by the authority, but the county shall not be responsible for costs that exceed the amount provided by the state for that transportation. A person authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or otherwise legally responsible persons or agencies in the same manner that costs for the transportation of other persons are charged and collected. [1993 c.484 §5; 1997 c.531 §5; 2009 c.595 §405]

February 27, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #145025 with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division and Clackamas County Social Services Division to serve as the Regional Coordinator for the Four (4) County Metro Aging & Disabilities Resource Connection Consortium for the Money Management Program

<b>Purpose/Outcomes</b>	Social Services' - Money Management Program, in partnership with members of the Metro Aging & Disabilities Resource Connection Consortium (ADRC), will coordinate the Money Management program services to seniors and people with disabilities to assist them with their finances.
<b>Dollar Amount and Fiscal Impact</b>	The total agreement is \$58,000. Funded by State General Funds designated for the Oregon Money Management Program (OMMP).
<b>Funding Source</b>	State of Oregon. No County General Funds are involved
<b>Safety Impact</b>	None
<b>Duration</b>	Effective upon signature and terminates on July 31, 2014
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	6570

**BACKGROUND:**

The Social Services Division (CCSS) of the Health, Housing & Human Services Department request the approval of an Intergovernmental Agreement with the State of Oregon, Department of Human Services, Aging and People with Disabilities Division. CCSS will serve as the Regional Coordinator for the Four (4) County Metro Aging & Disabilities Resource Connection Consortium for the Money Management Program. The Money Management Program (MMP) is a protective service for low income seniors and disabled adults who need assistance managing their finances. This promotes independent living, and helps prevent homelessness and unnecessary institutionalization or guardianship. This service is offered free of charge to eligible individuals who are at least 60 years of age and have limited incomes and assets. MMP staff train community volunteers to become Representative Payees and Bill Payers to support the financial needs of clients enrolled in other programs, including Mental Health and Developmental Disabilities. These volunteers work to ensure that the client's public benefits, such as Social Security and Supplemental Security Income (SSI), are used for high priority client needs like shelter, health and food. MMP clients are referred by their case managers to receive money management services.

The four county members of the Metro ADRC Consortium (Clackamas, Columbia, Multnomah and Washington) will work in partnership to expand MMP in the region. Currently, only Clackamas County Social Services has a fully operational Money Management program (MMP). Regional Coordination for

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www.clackamas.us/community\_health

the expansion project will be provided by Clackamas County Social Services MMP which will utilize its current organizational payee structure to move the expansion forward. Each local office will designate a point person to coordinate the expansion at the local level.

Social Services Division is the designated Regional Sponsor for the Metro ADRC Consortium as designated by the State of Oregon, Department of Human Services, Aging and People with Disabilities Division. This agreement reflects the initial funding through July 31, 2014. The agreement was reviewed and approved by County Council on February 12, 2014.

**RECOMMENDATION:**

Staff recommends the Board approval of this agreement and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cindy Becker", written in a cursive style.

Cindy Becker, Director



**Agreement Number 145025**

**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 Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and,

Clackamas County  
Social Services Division  
2051 Kaen Road  
PO Box 2950  
Oregon City OR 97045  
Attn: Brenda Durbin  
Voice: 503-655-8640  
Email: [sbandes@clackamas.us](mailto:sbandes@clackamas.us)

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to the DHS'

Aging and People with Disabilities  
Advocacy and Development Office  
500 Summer Street NE – E02  
Salem OR 97301  
Agreement Administrator: Bob Weir, or Delegate  
Telephone: 503-945-2321  
Email: [bob.weir@state.or.us](mailto:bob.weir@state.or.us)

**1. Effective Date and Duration.**

This Agreement shall become effective on the date this Agreement has been fully executed by every party and, when required, approved by Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on July 31, 2014. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

**2. Agreement Documents.**

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Required Federal Terms and Conditions

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits, Exhibits D, A, B, and C.
- c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

**3. Consideration.**

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is \$58,000. DHS 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.
- b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

**4. Vendor or Sub-Recipient Determination.**

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

County is a sub-recipient; **OR**  County is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement:   N/A

**5. County Data and Certification.**

- a. **County Information.** County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

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

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

Street address: \_\_\_\_\_

City, state, zip code: \_\_\_\_\_

Email address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_ Facsimile: ( ) \_\_\_\_\_

Federal Employer Identification Number: \_\_\_\_\_

**Proof of Insurance:**

Workers' Compensation Insurance Company: \_\_\_\_\_

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

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

- b. **Certification.** 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. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of County and that County 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 the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;
- (2) The information shown in this Section 5., County Data and Certification, is County's true, accurate and correct information;

- (3) 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;
  - (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
  - (5) County 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
  - (6) County is not subject to backup withholding because:
    - (a) County is exempt from backup withholding;
    - (b) 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
    - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.

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

**COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS**

**6. Signatures.**

**County: Clackamas County**

**By:**

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Authorized Signature	Title	Date
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**State of Oregon acting by and through its Department of Human Services**

**By:**

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Authorized Signature	Title	Date
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**Approved for Legal Sufficiency:**

Not Required per OAR 137-045-0030(1)(a)

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Assistant Attorney General		Date
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**Program Office Review:**

Approved via email for signature routing February 5, 2014

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Jeannette Hulse		Date
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**Office of Contracts and Procurement Review:**

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Vincent Dunn, Contract Specialist		Date
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## EXHIBIT A

### Part 1 Statement of Work

County shall provide the following services equitably in Clackamas County; Columbia County; Multnomah and Washington County.

#### 1. Definitions

For purposes of this Agreement, the terms below shall have the following meanings:

**Abuse** means any of the following; physical abuse, neglect, abandonment, verbal or emotional abuse, financial exploitation, sexual abuse, involuntary seclusion or wrongful use of physical or chemical restraint as defined in OAR 411-020-0002.

**Adult Protective Services (APS)** means a DHS program funded through the State of Oregon with the responsibility to provide protection and intervention for older adults and adults with physical disabilities who are unable to protect themselves from harm and neglect.

**Aging and Disability Resource Connection (ADRC)** means a locally-delivered set of services for Oregon families, caregivers and Consumers seeking information about long-term services and supports. Oregon is divided up into nine (9) ADRC regions. As of March 2013, there are four (4) operational ADRC service regions serving 50% of Oregon's population with plans to expand to nine (9) operational ADRC service regions by 2015.

**ADRC Region** means the geographical area where the local aging and disability service agencies partner to provide the ADRC core services of information and assistance, options counseling, care transitions, health promotions and streamlined access to public programs. There are nine (9) ADRC regions in Oregon. ADRC regions will have one Regional Sponsor.

**Bill Payer** means a Money management Program service delivered through a network of Regional Sponsors. Bill Payer is offered to seniors and people with disabilities, who are at least 60 years of age and who have limited incomes and assets. Volunteers provide one-on-one assistance to Consumers who do not have the capacity to manage their financial benefits.

**Business Agreement** means a written agreement of terms and conditions between the County and Easter Seals Oregon as the State Coordinating Agency for provision of MMP services.

**Consumer** means Oregon seniors and people with disabilities, who are at least 60 years of age with limited income and assets, receiving at least one Money Management Program service.

**Criminal History and Background check** means the process as outlined in EXHIBIT A, Part 3, Special Terms and Conditions, 4. Criminal History Checks.

**Cultural responsiveness** means the provision of the program and its services so that Consumers are not excluded from participation in services or discriminated against on the ground of race, color, or national origin.

**Department of Human Services or DHS** means the State of Oregon, Department of Human Services.

**Employee** means any paid person who provides direct service to consumers enrolled in Money Management Program or provides administrative support to contractor or Regional Sponsor.

**Key Persons** means County's Authorized Representative, Project Manager or other County personnel designated as Key Persons described in Exhibit A, Part 1. assigned to perform the Work under the resulting Agreement. DHS reserves the right to accept or deny the use of specific Key Persons and employed at any time during the project.

**Linguistic Responsiveness** means the provision of project services so that Consumers with limited English proficiency have meaningful access to project services in compliance with all federal and state laws.

**Limited income and assets** means the total financial income amount of a Consumer according to the federal Housing and Urban Development current financial guidelines.

**Money Management Program (MMP)** is a program that offers daily money management services to help seniors and people with disabilities, who are at least 60 years of age and have limited income, who have difficulty budgeting, paying routine bills, and keeping track of financial matters. For the purposes of this Agreement, Money Management Program services include Bill Payer and Representative Payee services.

**Money Management Program Model** means the training and program curriculum which includes a statewide model of:

- a. Early intervention services as an alternative to guardianships and extended independence for vulnerable seniors and people with disabilities who also have a limited income.
- b. Expanding the availability of Money Management Program services
- c. Depending upon Volunteers to provide the Money Management Program services

**Oregon Administrative Rule (OAR)** is the official compilation of rules and regulations having the force of law in the U.S. state of Oregon. OAR's are available at <http://arcweb.sos.state.or.us/pages/rules/index.html>

**Oregon Revised Statute (ORS)** is the codified body of statutory law governing the U.S. state of Oregon, as enacted by the Oregon Legislative Assembly, and occasionally, by citizen initiative. The statutes are subordinate to the Oregon Constitution. Oregon Revised Statutes are available at <http://landru.leg.state.or.us/ors/>

**Regional Advisory Council** means the advisory body overseeing and providing guidance and support to the Regional Sponsor administering the Money Management Program. The Regional Advisory Council will meet on a quarterly basis and will be made up of at least 33% Consumers, Volunteers or Consumer advocates of the Money Management Program including members from the underserved populations within the subject county's Clackamas, Columbia, Multnomah and Washington or local service area. Additional Local Advisory Council members may include, but are not limited to:

- a. Regional Sponsor
- b. Agencies that directly and indirectly involve the Consumers
- c. Area Agency on Aging
- d. Social Security Administration
- e. Representatives from a local bank

**Regional Sponsor** means the office within an ADRC Region that administers and coordinates MMP services throughout the ADRC region. Regional Sponsors must have a Business Agreement with State Coordinating Agency and a contract with DHS. Regional Sponsors will also support satellite offices within their ADRC Region if a satellite office exists.

**Representative Payee Service** means a Money Management Program service delivered through a network of Regional Sponsors by Volunteers. Representative Payee Service is offered to seniors and people with disabilities who are at least 60 years of age and who have limited incomes. Volunteers provide one-on-one assistance to Consumers who do not have the capacity to manage their Federal benefits.

**Satellite office** means a community service agency that has a written agreement with the Regional Sponsor within the ADRC Region to provide MMP services in their community.

**State** means the State of Oregon.

**State Advisory Council** means an advisory body which oversees the operations and objectives of the State Coordinating Agency. The State Advisory Council shall meet on a quarterly basis and shall be made up of at least 33% Consumers, Volunteers or Consumer advocates of the Money Management Program, members from underserved populations. Additional State Advisory Council members may include, but not limited to:

- a. Regional Sponsor
- b. Agencies that directly and indirectly involve the Consumers
- c. Area Agency on Aging

- d. Social Security Administration
- e. Representatives from a bank

**Seniors and people with disabilities** means people who are at least 60 years of age, and who may have physical or mental disabilities and who are potentially eligible for Medicaid benefits without the intervention of Money Management Program services.

**State Coordinating Agency** means the agency that receives support and operational oversight for Bill Payer and Representative Payee Programs from the Department of Human Services.

**Underserved population** means groups identified by race, ethnicity and language that are receiving services at less than their proportional rate in their local county's population.

**Volunteer** means the person who provides direct service to consumers enrolled in Money Management Program services or provides administrative support to contractor or Regional Sponsor without financial reimbursement. Money Management Program Volunteers enter into agreements with Regional Sponsors.

**Work** means the required services, activities, tasks, deliverables, reporting and invoicing requirements, as described in Section 4 County Services and Activities.

## 2.0 Standards

Pursuant to ORS 279B.060 (2)(c) County shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services to DHS satisfaction.

## 3.0 Money Management Program (MMP) Overview

The MMP assists seniors and people with disabilities, who are at least 60 years of age and who have limited income and assets (Consumers) maintain peace of mind, independence, and financial protection. The MMP focuses on seniors and people with disabilities who are at risk of losing their independence due to inability to manage their finances. The MMP depends on the use of Volunteers who are trained, supervised, monitored, and partially insured to provide assistance with money management for Consumers who are unable to manage their own funds. MMP Volunteers help Consumers organize and keep track of financial papers, establish budgets, write checks, balance checkbooks, and serve as representative payees, if needed. MMP services allow Consumers to retain significant independence while preventing financial mishaps from occurring, such as being evicted for nonpayment of rent or not having enough money, by month's end, to pay for food and other necessities. Volunteers also provide a secondary and valuable service because many Consumers live alone. This secondary service includes companionship and socialization.

This project is intended to expand the MMP program within existing and new ADRC Regions throughout the State of Oregon to Consumers who are 60+ years of age, may or may not have a disability and with limited income and assets. There are no fees to consumers to participate in the MMP who meet the eligibility requirements in their respective ADRC Region and Regional Sponsors may not charge fees to stakeholders, partners or any entity or organization acting as a satellite office to deliver services in a local community.

This project is intended to be a new iteration of MMP in respective ADRC Region's and is not intended to replace, displace or duplicate program services being offered by other existing or competing programs. Consumers served under this iteration of the MMP will be new to the MMP and volunteers will be recruited and trained utilizing the new OMMP materials so they meet the requirements of this project.

#### **4.0 County Services and Activities**

County shall perform the following activities:

- 4.1 Receive Consumer referrals from DHS, Easter Seals Oregon, and other sources
- 4.2 Prioritize Consumer referrals
- 4.3 Provide initial and on-going training to Volunteers including, but not limited to, training on the provision of linguistically and culturally responsive services in collaboration with Easter Seals Oregon
- 4.4 Provide Money Management Program services to Consumers
- 4.5 Maintain a written list of all Volunteers who provide Money Management Program services and Consumers who receive services
- 4.6 Establish and maintain a local Advisory Council composed of at least 33% Consumers, Volunteers or Consumer Advocates of the Money Management Program and representatives of underserved populations
- 4.7 Terminate services to a Consumer as required or as requested by DHS
- 4.8 Terminate services provided by a Volunteer as required or as requested by DHS
- 4.9 Communicate with Consumers and Volunteers regardless of communication method or language
- 4.10 Prepare and submit written quarterly and annual reports to Easter Seals Oregon
- 4.11 Prepare and submit written monthly invoices for services provided in the subject month. County's invoice will reflect consumer and volunteer activity for the entire Region it serves including Clackamas, Columbia, Multnomah and Washington counties. County's initial report must reflect new consumers. Subsequent reports must reflect new Consumers since the previous invoice, ongoing Consumer activity, and terminated Consumer activity. County's invoice must include the number of consumers served and the number of volunteers providing services during the month of the invoice. County's initial report must reflect the number of new volunteers. Subsequent reports

must reflect new Volunteers since the previous invoice, the number of ongoing Volunteers, and the number of Volunteers terminated.

## **5.0 Deliverables**

1. Written monthly invoices containing information in 4.11 above for services provided in the subject month.

## EXHIBIT A

### Part 2 Payment and Financial Reporting

#### 1. Payment Provisions.

County shall prepare and submit invoices to DHS' Agreement Administrator at the address specified on page 1, or to any other address as DHS may indicate in writing to County. County's claims to DHS for overdue payments on invoices are subject to ORS 293.462.

##### A. Base Rate

DHS will pay County at the base rate of \$3,000.00 per month for each month beginning with the execution of this Agreement. DHS will prorate base rate payments for less than a full month at the rate of \$98.63 per day. DHS will pay County the base rate for up to six (6) months without Regional Sponsor providing services to any Consumers. County may begin providing services to consumers upon execution of this Agreement. The first six (6) months of the Agreement period are intended to allow sufficient time for the County to plan and fully implement a Regional MMP. At least one (1) Consumer must be enrolled and receiving MMP services beginning six (6) months after execution of this Agreement in order to continue to receive the monthly base amount.

County may solicit and receive bridge funding from Columbia, Multnomah and Washington counties up to a maximum of \$1,000.00 per month if County fails to serve 21 consumers per month. Bridge funding is intended to supplement a shortage of consumer incentive payments received by County for expansion costs of the OMMP to Columbia, Multnomah and Washington counties. County shall cease to solicit and receive bridge funding from Columbia, Multnomah and Washington counties once 21 consumers per month are served.

##### B. Consumer Service Incentive Payments

DHS will pay County a monthly Consumer service incentive payment calculated, as described below, on the number of new Consumers receiving MMP services each month. The monthly incentive payment is calculated based upon how many Consumers receive MMP services in a subject month. "New consumers" are defined as consumers enrolled on or after execution date of this Agreement. DHS will not pay County an incentive payment amount in excess of \$12,000.00. If County exceeds the maximum \$12,000.00 available for incentive payments DHS may, at its sole discretion, negotiate additional incentive payments through an amendment to this Agreement.

DHS will pay County Consumer service incentive payments calculated, as described below, not to exceed \$3,000.00 per month and not to exceed the maximum not-to-exceed amount of this Agreement. DHS will pay County upon receipt, review and approval of County's written monthly invoice. Incentive payments are calculated as follows:

- a. 1 - 20 consumers served = \$500.00
- b. 21 - 40 consumers served = \$1,000.00

- c. 41 - 60 consumers served = \$1,500.00
- d. 60 - 80 consumers served = \$2,000.00
- e. 81 - 100 consumers served = \$2,500.00
- f. 101 - 120 consumers served = \$3,000.00

**C. Volunteer Service Incentive Payments**

DHS will pay County a one-time Volunteer Service Incentive Payment not to exceed \$10,000.00. Volunteer service incentive payments are calculated on the number of Volunteers that provide MMP services during the term of the Agreement. DHS will pay County a Volunteer service incentive payment of \$2,000.00 for every 10 Volunteers that have been trained and who provide MMP services up to 100 Volunteers. County may meet and be paid for more than one Volunteer level as described below.

DHS will pay County a single Volunteer service incentive payment upon receipt, review and approval of County's written invoice for the total number of volunteers as follows:

	<u>Number of Volunteers</u>	<u>Incentive</u>
a.	Volunteer level 1: Up to 10 volunteers	\$2000.00
b.	Volunteer level 2: 20 volunteers	\$2000.00
c.	Volunteer level 3: 30 volunteers	\$2000.00
d.	Volunteer level 4: 40 volunteers	\$2000.00
e.	Volunteer level 5: 50 or more volunteers	\$2000.00
	<b>Total potential incentive</b>	<b>\$10,000.00</b>

DHS may, at DHS's sole discretion, amend this Agreement for an additional one year period beginning August 1, 2014 and ending July 31, 2015. DHS will review the base and incentive payments to County during the initial Agreement term. County and DHS will negotiate the schedule of base and incentive payments for any additional time period the parties may negotiate. Negotiations concerning the schedule of incentive payments must be completed no later than May 20, 2014.

**2. Travel and Other Expenses.**

DHS shall not reimburse County separately for any travel or additional expenses under this Agreement.

## EXHIBIT A

### Part 3 Special Terms and Conditions

#### 1. Confidentiality of Client Information.

- a. All information as to personal facts and circumstances obtained by the County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify *particular individuals*.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. DHS, County and any subcontractor will share information as necessary to effectively serve DHS clients.

#### 2. Amendments.

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
  - (1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County under this Agreement.
  - (2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS further reserves the right to amend the Statement of Work based on the original scope of work of RFP # 3554 for the following:
  - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
  - (2) Implement additional phases of the Work; or
  - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 "Amendments" of this Agreement.

**3. County Requirements to Report Abuse of Certain Classes of Persons.**

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including:
  - (1) Elderly Persons (ORS 124.055 through 124.065);
  - (2) Residents of Long Term Care Facilities (ORS 441.630 through 441.645);
  - (3) Adults with Mental Illness or Developmental Disabilities (ORS 430.735 through 430.743).
- b. County shall make reports of suspected abuse of persons who are members of the classes established in Section 3.a. above to appropriate authorities as a requirement of this Agreement.
- c. County shall immediately report suspected child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the County shall notify the referring DHS caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.
- d. County shall report suspected abuse of the elderly or abuse of patients in a medical or care facility immediately to DHS Aging and People with Disabilities office or to a law enforcement agency.
- e. If known, the abuse report should contain the following:
  - (1) The name and address of the abused person and any people responsible for their care;
  - (2) The abused person's age;
  - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
  - (4) The explanation given for the abuse;
  - (5) The date of the incident; and
  - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

**4. Background Checks.**

The following working under this Agreement are subject to a background check through the DHS Background Check Unit, pursuant to OAR 407-007-0200 through 407-007-0370, as such rules may be revised from time to time:

1. All employees of the County providing care or having access to clients, client information, or client funds, referred by DHS.
2. All volunteers of the County providing care or having access to clients, client information, or client funds, referred by DHS.
3. All subcontractors of the County providing care or having access to clients, client information or clients funds, referred to by DHS.

Background checks need to be completed annually or if there is a reason to believe a new check is needed per OAR 407-007-0220(4)(g), whichever occurs first.

Employees of County currently working with this program do not need to be re-checked until their annual check date.

Employees that move into working with OMMP clients and volunteers that are new to the program do need the background check requirements.

Employees, volunteers and subcontractors of County providing care or having access to clients are able to complete training but are not allowed to begin work with clients, or have access to client funds or confidential information until their background check has cleared.

5. **Media Disclosure.** County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the DHS office that referred the child or family. The County will make immediate contact with the DHS office when media contact occurs. The DHS office will assist the County with an appropriate follow-up response for the media.
  - a. All communications and marketing materials, including social media and web content, produced by the Agency for the MMP under this contract, must be preapproved by the DHS Communications Office, the DHS Agreement Administrator, and OMMP prior to release.
  - b. Any work as specified in a. above shall be done in accordance with the DHS Publication and Graphic Design Policy Number DHS-130-001  
*[http://www.dhs.state.or.us/policy/admin/wpdt/130\\_001.htm](http://www.dhs.state.or.us/policy/admin/wpdt/130_001.htm)*
6. **Nondiscrimination.** County must provide services to DHS clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

## EXHIBIT B

### Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
  - a. County represents and warrants as follows:
    - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
    - (2) **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by County and (b) do not and will not violate any provision of any applicable

law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

**b.** DHS represents and warrants as follows:

- (1) Organization and Authority. DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DHS is a party or by which DHS may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DHS of this Agreement, other than approval by the Department of Justice if required by law.
- (3) Binding Obligation. This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, enforceable in accordance with its terms subject to the laws of bankruptcy,

insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

- c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**5. Funds Available and Authorized Clause.**

- a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

- b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

- 6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

- 7. **Compliance with Law.** Nothing in this Agreement shall require County or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.

**8. Ownership of Intellectual Property.**

- a. Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:
- (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
  - (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or County.
- b.** Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).
- c.** If state or federal law requires that DHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that the DHS or the United States own the intellectual property, then County shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, DHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.
- d.** County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

**9. County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:

- a.** County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
- b.** Any representation, warranty or statement made by County herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;

- c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
- d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

**10. DHS Default.** DHS shall be in default under this Agreement upon the occurrence of any of the following events:

- a. DHS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by County to measure performance by DHS is untrue in any material respect when made.

**11. Termination.**

- a. **County Termination.** County may terminate this Agreement:
  - (1) For its convenience, upon at least 30 days advance written notice to DHS;
  - (2) Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
  - (3) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or

- (4) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

**b. DHS Termination.** DHS may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;
- (6) Immediately upon written notice to County, if DHS determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
12. **Effect of Termination**
- a. **Entire Agreement.**
- (1) Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
  - (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
- b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
13. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
14. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any 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 in such a manner as 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 DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants County or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to 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.

- 17. Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
- 18. Assignment of Agreement, Successors in Interest.**

  - a.** County shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
  - b.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
- 19. Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- 20. Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, County shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
- 21. No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 22. Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**DHS:** Office of Contracts & Procurement  
250 Winter St NE, Room 306  
Salem, OR 97301  
Telephone: 503-945-5818  
Facsimile: 503-378-4324

**COUNTY:** (see page one)

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.

29. **Construction.** *[Reserved]*

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

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

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the 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 the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the 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 the County on the one hand and of the 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. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

31. **Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(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 and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in

part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.

- 32. Stop-Work Order.** DHS may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
- a.** Cancel or modify the stop work order by a supplementary written notice; or
  - b.** Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

## EXHIBIT C

### Subcontractor Insurance Requirements

**General Requirements.** County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance as specified in this Exhibit C and meeting all the requirements under this Exhibit C before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DHS. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with whom the county directly enters into a contract. It does not include a subcontractor with whom the contractor enters into a contract.

- 1. Workers' Compensation.** Insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

- 2. Professional Liability.**

Required by DHS  Not required by DHS.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than the following, as determined by DHS:

- \$1,000,000 per occurrence limit for any single claimant; and
- \$1,000,000 per occurrence limit for multiple claimants.

- 3. Commercial General Liability.**

Required by DHS  Not required by DHS.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to DHS. This insurance shall include personal injury liability, products and completed operations. Coverage shall be

written on an occurrence form basis, with not less than the following amounts as determined by DHS:

**Bodily Injury/Death:**

- \$1,000,000 per occurrence limit for any single claimant; and
- \$1,000,000 per occurrence limit for multiple claimants.

**AND**

**Property Damage:**

- \$1,000,000 per occurrence limit for any single claimant; and
- \$1,000,000 per occurrence limit for multiple claimants.

**4. Automobile Liability.**

- Required by DHS  Not required by DHS.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by the DHS:

**Bodily Injury/Death:**

- \$1,000,000 per occurrence limit for any single claimant; and
- \$1,000,000 per occurrence limit for multiple claimants.

**AND**

**Property Damage:**

- \$1,000,000 per occurrence limit for any single claimant; and
- \$1,000,000 per occurrence limit for multiple claimants.

- 5. Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
- 6. "Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail" coverage period

reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

7. **Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
8. **Certificate(s) of Insurance.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

## EXHIBIT D

### Required Federal Terms and Conditions

**General Applicability and Compliance.** Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County shall include and require all subcontractors to include in all

contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - e. No part of any federal funds paid to County under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
  - g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
  - h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.
6. **HIPAA Compliance.** As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any Work or obligations of DHS related to this Agreement are covered by HIPAA. County shall determine if County will have access to, or create any protected health information in the performance of any Work or other obligations under this Agreement. To the extent that County will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, DHS as specified in the Agreement, County shall comply and cause all subcontractors to comply with the following:
- a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. To the extent that County is performing functions, activities, or services for, or on behalf of DHS, in the performance of any Work required by this Agreement, County shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 407-014-0000 et. seq., or DHS Notice of Privacy Practices. A copy of the most recent DHS Notice of Privacy Practices may be obtained by contacting DHS or by looking up form number 2090 on the DHS web site at <https://apps.state.or.us/cf1/FORMS/>.

- b. Data Transactions Systems. If County intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.
  - c. Consultation and Testing. If County reasonably believes that the County's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the DHS Information Security Office. County or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
  - d. Business Associate Requirements. County and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.
7. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
8. **Audits.**
- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
  - b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.
9. **Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
10. **Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a

controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to DHS clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of this Agreement.

11. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. Section 6081 et. seq.).
12. **Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR Part 431.107(b)(1) & (2).

- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that *any falsification or concealment of a material fact may be prosecuted under federal and state laws.*
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

**13. Agency-based Voter Registration.** County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

**14. Disclosure.**

- a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.



February 27, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the State of Oregon,  
Department of Human Services for Job Opportunities and Basic Skills  
for clients receiving Temporary Assistance to Needy Families (TANF)

<b>Purpose/Outcomes</b>	Provide job search skills to low income families
<b>Dollar Amount and Fiscal Impact</b>	\$593,887.00 Revenue. No match is required. No county general funds are involved.
<b>Funding Source</b>	State of Oregon, Department of Human Services
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2013 and terminates on June 30, 2014
<b>Previous Board Action</b>	The original contract was approved by the Board of County Commissioners on 9/27/07 - agenda item #092707-B1
<b>Contact Person</b>	Lori Mack 503 655-8843
<b>Contract No.</b>	6314

**BACKGROUND:**

The Community Solutions Division of the Health, Housing & Human Services Department request the approval of an Intergovernmental Agreement (IGA) with the State of Oregon, Department of Human Services. This IGA funds 5.5 FTEs who provide job search skill building through classes and one-on-one coaching and job placement assistance to clients receiving Temporary Assistance to Needy Families (TANF), formerly known as public assistance or welfare. Additionally 2.0 FTE are funded to provide program support and data entry. Community Solutions has partnered with the Department of Human Services since 1988 to provide these services.

This agreement has previously been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends Board approval of this amendment and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
Cindy Becker, Director

Agreement Number 144680



**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 Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and,

**Clackamas County  
Acting By And Through Its  
Clackamas County Community Solutions  
112 11th Street  
Oregon City, OR 997045  
Phone number: (503) 655-8842  
Fax number: (503) 655-8841  
District 15**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to the DHS'

**Oregon Department of Human Services  
Self Sufficiency  
Agreement Administrator: Mary Clark  
315 S Beavercreek Road  
Oregon City, OR 97045  
Telephone: (971) 673-7321  
(971) 673-7382  
Email: [\\_mary.s.clark@state.or.us](mailto:_mary.s.clark@state.or.us)**

**1. Effective Date and Duration.**

This Agreement shall become effective on July 1, 2013, regardless of the date it is fully executed by every party and, when required, approved by Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on June 30, 2015. Agreement termination shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by County that has not been cured. **Agreement Documents.**

This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work – Definitions
- (2) Exhibit A, Part 2: Statement of Work – General Requirements
- (3) Exhibit A, Part 3: Statement of Work – Services
- (4) Exhibit A, Part 4: Statement of Work – Performance Requirements
- (5) Exhibit A, Part 5: Payment and Financial Reporting
- (6) Exhibit A, Part 6: Special Terms and Conditions
- (7) Exhibit B: Standard Terms and Conditions
- (8) Exhibit C: Subcontractor Insurance Requirements
- (9) Exhibit D: Required Federal Terms and Conditions
- (10) Exhibit E: Business Plan
- (11) Exhibit F: Business Associate Agreement.

There are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified in it.

- a. This Agreement and the documents listed in Section 2, Agreement Documents, Subsection a. above, shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, Exhibit A, Part 6, Exhibit A, Part 4, Exhibit A, Part 2, Exhibit E, Exhibit A, Part 5, Exhibit A, Part 3, Exhibit A, Part 1, Exhibit B, Exhibit C and Exhibit F.
- b. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

**2. Consideration.**

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is \$1,187,774.00. DHS 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.
- b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

**3. Vendor or Sub-Recipient Determination.**

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

County is a sub-recipient; **OR**  County is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: [93.558].

4. **Agreement representatives** for DHS and County shall be as follows:

DHS' representatives

Agreement Administrator:	Mary Clark
Address:	315 S Beaver Creek Road
City/State/Zip:	Oregon City, OR 97045
Phone:	Telephone: (971) 673-7321
Fax:	Fax: (971) 673-7382
E-mail:	Email: <a href="mailto:_mary.s.clark@state.or.us">_mary.s.clark@state.or.us</a>
District Manager:	Jerry Buzzard
SSP Program Manager:	Dave Flock

Agency's representative for this Agreement is:

<b>County's Contact:</b>	<b>Maureen Thompson</b>
Address:	112 11th Street
City/State/Zip:	Oregon City, OR 97045
Phone:	(503) 655-8842
Fax:	(503) 655-8841
E-mail:	<a href="mailto:mautho@co.clackamas.or.us">mautho@co.clackamas.or.us</a>

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5. **County Data and Certification.**

- a. **County Information.** County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

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

County Name (exactly as filed with the IRS): Clackamas County

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Street address: 112 11<sup>th</sup> St.

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

Email address: mautho@co.clackamas.or.us

Telephone: (503)655-8842 Facsimile: (503)655-8841

Federal Employer Identification Number: 93-6002286

**Proof of Insurance:**

Workers' Compensation Insurance Company: self insured

Policy #: N/A Expiration Date: N/A

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

- b. **Certification.** 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. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of County and that County 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 the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in this Section 5., County Data and Certification , is County's true, accurate and correct information;
  - (3) 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;
  - (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
  - (5) County 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
  - (6) County is not subject to backup withholding because:
    - (a) County is exempt from backup withholding;
    - (b) 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
    - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.

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

**6. Signatures.**

**Clackamas County**

**By:**

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Authorized Signature	Title	Date
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**State of Oregon acting by and through its Department of Human Services**

**By:**

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	Deputy Director	2/19/2014
Authorized Signature	Title	Date

**Approved for Legal Sufficiency:**

Mark Williams, Attorney in Charge –Business Transactions Section

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Assistant Attorney General	2/19/2014
	Date

**Office of Contracts and Procurement:**

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Contract Specialist	Date
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**EXHIBIT A**  
**Statement of Work**  
**Part 1-Definitions**

1. "Administrative Cost" means the cost of administrative functions both directly and indirectly associated with all Services provided under this Agreement to be included in this cost category. Administrative Costs can include personnel and non-personnel costs, and direct and indirect costs. Administrative functions include: general accounting, coordination, budgeting, financial and case management; audits, reviews, incident reports, property management, personnel and payroll; and information systems costs related to these functions.
2. "Business Plan" means the plan that provides the details of the manner in which the County will provide JOBS Services.
3. "Case Manager" means DHS personnel who assist in the planning, coordination, monitoring, and evaluation of Services for an individual with emphasis on quality of care, continuity of Services, and cost-effectiveness.
4. "Case Plan" is a personal development plan (PDP) developed with the Participant and includes activities that will support the Participant in meeting their employment and self sufficiency goals.
5. "Direct Cost" means a cost which can be traced to or identified as a cost that is fully charged to one source and is not cost-allocated. These can be both administrative costs and program costs.
6. "Services" means Services provided directly to and through contact with "Participants".
7. "District" means the geographical Service area designated by the DHS.
8. "Family Services Manual (FSM)" means the DHS manual that outlines the rules, policies and procedures for the deliverance of Self-Sufficiency programs administered through the Department of Human Services. The website is located at:  
[http://www.dhs.state.or.us/caf/ss\\_stafftools.htm](http://www.dhs.state.or.us/caf/ss_stafftools.htm)
9. "Full-time equivalent (FTE)" is a unit that indicates the workload of an employed person in a way that makes workloads comparable across various contexts. FTE is often used to measure a worker's involvement in a project, or a standard of measure for all workloads comparable across various types of services provided. An FTE of 1.0 means that the person is equivalent to a full-time worker, while an .05 FTE signals that the worker is only half-time
10. "Indirect Cost" means a cost that cannot be fully charged to a funding source and is allocated among benefiting programs. This includes administrative and program costs for Services that benefit several programs and projects. This includes staff (admin and program)

that serves multiple funding programs and cannot be wholly charged to only one of them.

11. "JOBS" means the Job Opportunity and Basic Skills program, the TANF employment and training program.
12. "JOBS Plus" means subsidized employment, in lieu of TANF or SNAP benefits.
13. "Participant" is a TANF individual referred to County for Services.
14. "Program Cost" means costs attributed to Services provided directly to Participants. This includes personnel costs of staff FTE providing the Services, supplies, Equipment, space, materials, and "Indirect Costs" associated with these staff FTE.
15. "Services" mean all Services performed by County under this Agreement in accordance with Self Sufficiency Program (SSP), Statement of Work found herein.
16. "TANF" means Temporary Assistance for Needy Families, a program which provides cash benefits to one- and two-parent low-income families.
17. "TRACS" means DHS' electronic narrative system for the self-sufficiency program.
18. "SNAP" means "Supplemental Nutrition Assistance Program", formerly know as Food Stamps.

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**EXHIBIT A**  
**Part 2-Statement of Work**  
**General Requirements**

**1. INTRODUCTION**

This Statement of Work defines the Services that County will provide under the Agreement to provide Services for TANF adults and teen parents referred to County by DHS ("Participants") within County's District.

**2. WORK**

County shall conduct the Services according to the Statement of Work Standards, which shall include a current Business Plan. County shall conduct Services in accordance with the Services and shall meet the Performance Requirements. County shall perform Services within the budget established in this Agreement and the Agreement budget summary.

**3. JOBS SERVICE DELIVERY, AVAILABILITY AND STANDARDS**

**a. JOBS Services**

County shall provide specific JOBS Services outlined in the Business Plan in a manner consistent with the JOBS program guidelines outlined in the Family Services Manual. The JOBS program guidelines and the complete list of the JOBS Services are located and described in the FSM located at [http://www.dhs.state.or.us/policy/selfsufficiency/em\\_firstpage.htm](http://www.dhs.state.or.us/policy/selfsufficiency/em_firstpage.htm), Staff Tools website at <http://www.dhs.state.or.us/caf/ss/tanf/employment.html#jobs>, and Oregon Revised Statutes at <http://www.leg.state.or.us/ors/412.html>.

**b. General Provision of Services by County**

County is responsible for the provision of Services to the Participants in the geographic area of the District designated in this Agreement. The County is responsible for ensuring provision of Services during extended hours of operation. Required extended hours of operation may include evening and weekend Service availability both pre and post standard 8:00am - 5:00pm business hours if determined necessary and documented in the Business Plan. Provision of Services and necessary coverage shall be provided fifty-two (52) weeks a year, in accordance with the Business Plan.

- (1) County shall provide all Services in a manner consistent with the JOBS program guidelines outlined in the Family Services Manual (FSM), Staff Tools and Oregon Revised Statutes located at the following DHS websites respectively:

[http://www.dhs.state.or.us/policy/selfsufficiency/em\\_firstpage.htm](http://www.dhs.state.or.us/policy/selfsufficiency/em_firstpage.htm),  
<http://www.dhs.state.or.us/caf/ss/tanf/employment.html#jobs> and  
<http://www.leg.state.or.us/ors/412.html>

- (2) County is responsible for the provision of Services to DHS referred Participants within all of the counties located within the District area, as

defined by the DHS, in accordance with the Business Plan.

- (3) Based on the Participant Case Plan, each Participant shall be provided the opportunity to participate forty (40) hours per week in Services or as otherwise specified in the Business Plan. DHS' expectation is that Participants shall participate for the number of hours best determined by DHS to meet the Participant's individual Service needs.
- (4) County will provide Services and materials in alternative languages, when required by DHS standards, in accordance with the Business Plan.
- (5) County shall consult the Agreement Administrator in making decisions that impact delivery of Services and the costs associated with delivery of Services under this Agreement and outlined in the Business Plan.
- (6) The County shall be prepared to serve Participants in accordance with the statement of work in this Agreement in accordance with fiscal and outcome requirements stated in the approved Business Plan.
- (7) County shall not deny Services to eligible Participants, except where Participant presents or creates undue safety risks to the County staff or fellow program Participants' or repeatedly creates undue disruption in the Services to other Participants'. County shall report such incidents to the responsible DHS Case Manager. DHS Case Manager, upon consultation with the County, may terminate Services until such time the modification of the Participant's disruptive behavior takes place.
- (8) Minority-Owned, Woman-Owned and Emerging Small Business ("MWESB") Participation. County shall support the requirements of increasing supplier diversity as noted in Governor Kitzhaber's Executive Order 12-03: "Minority-owned and Woman-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE). Emerging Small Business (ESB) firms are also an important sector of the state's economy." Oregon MWESB certified firms, as defined in ORS 200.055, have an equal opportunity to participate in the performance of contracts financed with state funds.
- (9) County shall meet the performance goals outlined in this Agreement.

c. **BUSINESS PLAN**

- (1) The Business Plan incorporated herein by reference in Exhibit E will provide the detail for the manner in which Services under this Agreement will be delivered.

- (2) The Business Plan shall include or describe the following:
- A. Service Delivery Detail
  - B. District-specific Definitions
  - C. Service Locations and Coverage Plans
  - D. Performance Targets
  - E. Performance-based Payment Provisions
  - F. Budget Detail
    - i Budget by Category
    - ii Budget by activity
    - iii Staff Costs estimate
  - G. The Business Plan provides details to the obligations that shall be provided by County under this Agreement. DHS through its Agreement Administrator, District and SSP Program Managers, retains review and final approval authority for all Services under the Business Plan.
  - H. County shall send all Business Plan revision requests in writing to the District Program Manager. The District SSP Program Manger may initiate a revision to the Business Plan, in which case the Manager shall notify County in writing when changes to the Business Plan are necessary to meet service levels and outcomes to be mutually agreed upon by both parties.
  - I. The SSP Program Manager and District Program Manager will review any revisions to the Business Plan and must approve any revision to the Plan for the revision to be effective. The District Program Manager will notify County in writing of approval or disapproval of any Business Plan revision request from County within ten business days from the initial date of the revision request.
  - J. The revised Business Plan shall contain revisions agreed upon by the parties and approved by the District Program and SSP Managers. The Agreement Administrator will notify the County when the Business Plan revisions are complete and when implementation of changes are to begin based on the revised Business Plan. The County office shall maintain the approved Business Plan file to at the County office.
  - K. The parties agree that once the revised Business Plan is approved following the process set forth above, the revised Business Plan will supersede any previous Business Plan and shall be deemed the Business Plan as described in Exhibit E and is incorporated into this Agreement administratively by reference as a revised Exhibit E.

L. Notwithstanding the administrative process set forth above for revisions to the Business Plan, the following types of Business Plan revisions must be incorporated into the Agreement by an amendment to the Agreement:

- i Adding Services that are not included in Exhibit A, Statement of Work, Part 3, Services
- ii Budget modifications requested by the County or required by current budgetary allocations approved by the Oregon Legislation that require changes to the overall Agreement Budget and Business Plan.

M. For the convenience of the parties, any accumulated changes to Performance outcomes as a result of revisions to the Business Plan may be incorporated into the Agreement as an updated Business Plan by way of a Agreement amendment at any time the Agreement is amended for other changes.

d. **REPORTING AND RECORD REQUIREMENTS**

- (1) Service delivery and progress reporting system shall be compatible with DHS information systems technology and utilize DHS Participant coding nomenclature.
- (2) The performance measures, data criteria, and report format, shall be determined by DHS and the agreed upon targets will be included in the Business Plan.
- (3) County shall report performance outcomes on a monthly basis in accordance with the Business Plan. This information will accompany County's monthly billing and sent to the Agreement Administrator.
- (4) County is responsible for the documentation of Participant information such as the Services provided to Participant, Participant progress, and actual attendance of Participant for all Services provided under this Agreement in accordance with the Business Plan.
- (5) County Service provider staff may enter and maintain timely and accurate Participant and Service delivery data on the DHS tracking system. County shall meet the time lines for input agreed upon by DHS and County in accordance with the Business Plan.

e. **Management, Accounting, Procurement and Financial Control**

- (1) If falsification of records by County or indirect Service provider is found through an audit, monitoring, or in any other way, County shall take steps to remedy the matter or give written notice to DHS why compliance is not feasible. DHS, at DHS expense, may initiate an independent audit to determine the extent of the alleged falsification, and DHS shall assign an auditing team to investigate the

allegations. County shall permit the State's auditing team to make investigations or take any other action DHS deems necessary to preserve the funds, records and program under this Agreement.

- (2) If, as a result of monitoring, changes in County practice or process are required, DHS shall notify County in writing. County will fully implement such changes within ten (10) calendar days of receipt of notice from DHS. If the County cannot implement the changes within ten (10) calendar days, the County may submit a written request for an extension to DHS for DHS approval prior to the expiration of the original ten (10) day period.
- (3) Failure by County to cooperate and participate in DHS monitoring may result in termination of this Agreement, and/or liability for costs resulting from County's non-cooperation and non-participation.

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**EXHIBIT A**  
**STATEMENT OF WORK**  
**Part 3 – Services**

1. JOBS Services by County shall be provided in accordance with the Business Plan and in a manner consistent with the JOBS program guidelines outlined in the Family Services Manual.
2. The JOBS Program Guidelines and the complete list of the JOBS Services are located and described in the FSM located at [http://www.dhs.state.or.us/caf/ss\\_stafftools.htm](http://www.dhs.state.or.us/caf/ss_stafftools.htm) and <http://www.leg.state.or.us/ors/412.html>
3. **JOBS SERVICE DELIVERY INCLUDES THE FOLLOWING SERVICE CATEGORIES:**

**a. Job Preparation and Placement**

The intent of these Services is to assess the employability of Participants, identify and address issues that limit employment success, and place the Participant in a job for which they are qualified.

Contracted job preparation and placement Services include program entry and orientation, initial and ongoing screening and assessment, job loss analysis, labor market test, skills inventory testing, career counseling, personal development plan Service coordination, development of employment opportunities, Life Skills, Job Readiness and Job Search, Basic Education, Work Experience and Work Supplementation, On-the-Job Training and Job Skills Training, JOBS Plus, Supported Work, Vocational Training, Degree Completion Initiative, Microenterprise, and Wellness Services.

**b. Job Retention and Wage Enhancement**

The intent of these Services is to help working families maintain employment and increase wages and benefits so that they can achieve independence from benefit programs.

Contracted retention and wage enhancement Services include initial and ongoing assessment and personal development plan Service coordination, mentoring and employment coaching, supplemental job search and placement Services, child support development, and brokering for employer and other local resources that enhance workplace and technical skills, supportive Services for families in the Post-TANF program, and otherwise assist working families.

**c. Self Sufficiency and Intervention**

The intent of these Services is to assess for Participant and family issues that hinder employment and independence. Contracted Services shall address these issues so

that independence is increased and dependence on public assistance benefits is decreased.

Services to increase self-sufficiency include assessments and screenings; family wellness Service coordination, domestic violence and crisis intervention; stabilizing living situation; school retention, medical issues, mental health and addiction Services, learning disabilities, parenting training, budgeting, Family Support and Connections. Supportive Services for families in State Family Preparatory Supplemental Security Income and (SSI), Social Security Disability Income programs, known as the State Pre-SSI/SSDI program.

**d. Re-Engagement Coordination**

The re-engagement process is used to reconnect the Participant with their case plan, reassess goals, identify steps needed to address self-sufficiency, establish whether the Participant is able to complete their case plan, and to address any barriers to participation.

The County shall support DHS in the re-engagement process by providing information about individual progress, bringing forward warranted concerns, helping to identify causes for participation issues and assisting the DHS and Participant in finding solutions that will encourage and support success.

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**EXHIBIT A**  
**STATEMENT OF WORK**  
**Part 4 – Performance Requirements**

**1. PERFORMANCE OUTCOMES**

The following performance outcomes shall be met by the County for the periods indicated, and shall be reported monthly as prescribed by the DHS and in accordance with the Business Plan.

- a. **Participants Served** - A person served under this Agreement is a person participating in at least one hour of an allowable funded activity in a given month.

(1) Fiscal Year 2013 through 2014: Monthly Average = 297

(2) Fiscal year 2014 through 2015: Monthly Average = 297

- b. **Work-Site Slots Filled Monthly** - A work site Participant is defined as a JOBS program Participant in unpaid employment. The JOBS activities for work site placements shall include Sheltered/Supported Work (SW), and Work Experience (WE).

(1) Fiscal Year 2013 through 2014: Monthly Average = 68

(2) Fiscal Year 2014 through 2015: Monthly Average = 68

- c. **Job Placements** - Job placement is defined as a placement of program Participants in unsubsidized full- or part-time employment, and resulting from County Services provided to Participant during the period of three full calendar months prior to the employment. The employment must be expected to last at least thirty (30) days to be counted. Placements must be in conformance with criteria set and validated by DHS, as described in the Business Plan.

(1) Fiscal Year 2013 through 2014: Monthly Average = 40

(2) Fiscal Year 2014 through 2015: Monthly Average = 40

- d. **Job Placements Leading to Closure** – Job placements leading to closure are placements that meet Job Placements criteria described in this section that lead to closure of the Participant Temporary Assistance for Needy Families (TANF) case as validated by DHS.

(1) Fiscal Year 2013 through 2014: Job Placements Leading to Closure Percentage = 90.10%

(2) Fiscal Year 2014 through 2015: Job Placements Leading to Closure Percentage = 90.10%

e. **JOBS Plus Participants Monthly** – A JOBS Plus Participant is defined as a Participant working at the JOBS Plus employer work-site during the month.

(1) Fiscal Year 2013 through 2014: Monthly Slot Allocation = 14

(2) Fiscal Year 2014 through 2015: Monthly Slot Allocation = 14

f. **Teen Parents Engaged in Educational Activities Monthly** - Referred mandatory teen parents (19 years of age and under) meeting satisfactory attendance per month in jointly developed and accepted plans in educational activities, or in other appropriate activities based on local resources. The level of participation will be determined as measured in DHS monthly branch and district-determined data reports and as described in the Business Plan.

(1) Fiscal Year 2013 through 2014: Monthly Target = 80% of mandatory teens referred for Services = 0

(2) Fiscal Year 2014 through 2015: Monthly Target = 80% of mandatory teens referred for Services = 0

g. **Other District-Specific Outcomes**

Locally defined performance measures as defined in the Business Plan.

## 2. **CORRECTIVE ACTION AND PERFORMANCE PENALTIES**

a. If the County fails to fulfill the requirements of Service delivery as described in the Agreement and the Business Plan, DHS will advise County in writing of any and all deficiencies pertaining to the quality and quantity of Service deliverables being provided either directly or indirectly by the County. The base requirement is to meet a minimum of eighty (80%) percent of each contracted performance goal.

b. County shall, unless an emergency exists that requires an immediate response, respond in writing within ten (10) business days of the date of receipt of a DHS notices of deficiencies.

c. County's response to DHS shall include a corrective action plan developed by the County which must include the time frame within which County will take corrective action(s), and within which the corrective action(s) will demonstrate the desired result of eliminating any and all deficiencies found by DHS in the quality and quantity of Service deliverables that are being provided either directly or indirectly by the County. DHS will reply to County's response within ten (10) business days of the date of receipt. County's performance will be assessed monthly as part of the Agreement payment authorization process.

- d. Failure by County to take the stated corrective action(s) or failure of the corrective action(s) to adequately remedy the noted deficiencies in the quality and quantity of the Service deliverables within DHS' required time frame, may result in termination of this Agreement. The decision will be based on a demonstrated lack of response or effort by County to make adjustments required in the corrective action plan and specified in the Business Plan. DHS district and central office will be involved in the determination to terminate the Agreement.
- e. DHS may require a monetary repayment for any payment for a previous month when County has failed to meet a minimum of eighty (80%) percent of each contracted performance goal during those months. The monetary penalty will be equal to the percent of the performance level not met, below the eighty (80%) percent threshold. The repayment may be deducted from future invoice payments following full completion of the corrective action process, specified in the Business Plan.
- f. Should DHS refer fewer Participants to the County than County is required to serve under the performance measures set out in the Agreement and its exhibits, DHS will adjust the required performance expectations accordingly.

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**EXHIBIT A**  
**Part 5**  
**Payment and Financial Reporting**

**1. PAYMENT FOR SERVICES**

County shall submit monthly, signed, and itemized invoices to the Agreement administrator not later than the forty-five (45) days following the invoiced Service month.

- a. County shall provide any final billing invoice for expenditures not previously billed under the monthly invoices to DHS no later than sixty (60) days following either the close of the fiscal year or termination date, whichever comes first. The final billing invoice will constitute County's full and final request for payment for Services. Payment of invoices submitted past the due date is subject to the availability of program funding and shall not be made without written justification from County and approval by DHS.
- b. County shall send invoice to DHS in the format prescribed by DHS, contain a statement by the authorized controller or financial officer of the County certifying that the billing is true and accurate, and financial documentation that supports all invoice billing for Services are available upon request and in accordance with the Business Plan. DHS may withhold payment for any specified item in an invoice until County provides documentation satisfactory to DHS.
- c. Budgets under this Agreement follow a fiscal year of July 1 through June 30 ("Service Year"). County shall use funding to provide Services. Funding for Services that is not expended within the fiscal year may, upon DHS approval, roll forward to the next fiscal year within the same biennium budget period and must be documented through an amendment. If the Agreement is terminated prior to the close of the fiscal year, no funding shall continue past the termination date.
- d. For County to receive reimbursement for travel and related expenses, County shall submit to DHS, and DHS must approve, a travel reimbursement policy. DHS shall reimburse County for travel and related expenses only as provided in the approved policy. County will include the travel reimbursement policy in the Business Plan.
- e. County may charge to the Agreement only reasonable, allowable, necessary, and allocable costs in accordance with GAAP and approved Business Plan, resulting from authorized Service delivery during the Agreement funding period.
- f. Any income earned from projects funded by this Agreement shall be retained by the County and shall be deducted from the total project allowable costs.
- g. County is liable for any damage, including wear-and-tear, to Equipment or space provided for under this Agreement when such damage results from County's utilization of the Equipment.

2. **PAYMENT AND FINANCIAL REQUIREMENT BUDGET SUMMARY**

The total budget summary for the entire Agreement period July 1, 2013 through June 30, 2014, is summarized in the budget summary as follows:

**Budget Summary**

**FY 2014**

July 1, 2013 to June 30, 2014

Administration Costs:	\$ 56,328.00
Program Costs:	\$ 537,559.00
<b>Total Budget:</b>	<b>\$ 593,887.00</b>

**FY 2015**

July 1, 2014 to June 30, 2015

Administration Costs:	\$ 56,328.00
Program Costs:	\$537,559.00
<b>Total Budget:</b>	<b>\$593,887.00</b>

**Grand Totals**

Administration Costs:	\$ 112,656.00
Program Costs:	\$1,075,118.00
<b>Total Budget:</b>	<b>\$1,187,774.00</b>

3. **PURCHASE AND DISPOSITION OF EQUIPMENT**

- a. All equipment acquisition is allowable only when specifically authorized through a formal written request made to, and approved by, DHS in writing prior to the acquisition:
- (1) The request shall be made in a format prescribed by DHS and submitted to the DHS TANF Manger.
  - (2) All written County requests for acquisition of all equipment items shall have the approval signature of the District Manager or Self Sufficiency Program Manager prior to submitting the request to the TANF Manager for final approval.
- b. For purposes of this section, "Equipment" means tangible, non-expendable personal property having a useful life of more than one year and a net acquisition cost of more than \$5,000 per unit. However, for purposes of information technology Equipment, the monetary threshold does not apply. Information technology Equipment shall be tracked for the mandatory line categories listed below:
- (1) Network
  - (2) Personal Computer
  - (3) Printer/Plotter

- (4) Server
  - (5) Storage
  - (6) Software
- c. For any Equipment authorized by DHS for purchase with funds from this Agreement, ownership shall be in the name of the County and County is required to accurately maintain the following Equipment inventory records:
- (1) description of the Equipment;
  - (2) serial number;
  - (3) where Equipment was purchased;
  - (4) acquisition cost and date; and
  - (5) location, use and condition of the Equipment
- d. County shall provide the Equipment inventory list to the Agreement Administrator annually by June 30<sup>th</sup> of each year. County shall be responsible to safeguard any Equipment and maintain the Equipment in good repair and condition while in the possession of County. County shall depreciate all Equipment, with a value of more than \$5,000, using the straight line method.
- e. Upon termination of this Agreement, or any Service thereof, for any reason whatsoever, County shall, upon request by DHS, immediately, or at such later date specified by DHS, tender to DHS any and all Equipment purchased with funds under this Agreement as DHS may require to be returned to the State. At DHS' direction, County may be required to deliver said Equipment to a subsequent contractor for that contractor's use in the delivery of Services formerly provided by County. Upon mutual agreement, in lieu of requiring County to tender the Equipment to DHS or to a subsequent contractor, DHS may require County to pay to DHS the current value of the Equipment. Equipment value will be determined as of the date of Agreement or Service termination.
- f. If funds from this Agreement are authorized by DHS to be used as a portion of the purchase price of Equipment, requirements relating to title, maintenance, Equipment inventory reporting and residual value shall be negotiated and the agreement reflected in a special condition authorizing the purchase.
- g. Notwithstanding anything herein to the contrary, County shall comply with 45 CFR 92.32, which, generally, describes the required maintenance, documentation, and allowed disposition of Equipment purchased with federal grant funds.

#### 4. INTERIM PAYMENTS

Interim payments may be made under this Agreement, only if prior-approved by DHS.

- a. County must request the interim payment in writing with the reason why the payment is needed and with justification.

- b. No more than 1/12<sup>th</sup> of the current annual budget can be issued as an interim payment. The interim payment and any interest earned from the interim payment will be repaid by adjusting future invoices until the amount is reconciled within the same budget period the interim payment was made.

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**EXHIBIT A**  
**Part 6**  
**Special Terms and Conditions**

**1. Confidentiality of Client Information**

- a. All information as to personal facts and circumstances obtained by the County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, the responsible parent of a minor child, or his or her guardian except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. DHS, County and any subcontractor will share information as necessary to effectively serve DHS clients.

**2. Criminal History Check**

County shall verify that any employee working with youth and program Participants has not been convicted of child abuse, offenses against persons, sexual offenses, child neglect, or any other offense bearing a substantial relation to the qualifications, functions or duties of an employee scheduled to work with youth and program Participants.

- a. County shall establish verification by having the applicant as a condition of employment, apply for and receive a criminal history check, which will be shared with County.
- b. County shall determine whether the employee has listed convictions and whether these convictions pose a risk to working safely with youth and program Participants.
- c. County shall confirm in writing the reasons for hiring individuals who have any of the above-listed crimes listed on their applicant/employee record. The reasons shall address how the applicant or employee is presently suitable or able to work with referred youth and program Participants' in a safe manner. County will place the information in the employee's personnel file.

**3. Equal Access to Services**

- a. County shall provide equal access to covered Services for both males and females under 18 years of age, including access to appropriate facilities, Services and treatment, to achieve the policy in ORS 417.270.
- b. County shall immediately report any evidence of child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 to 419B.045). If law enforcement is notified, County shall notify the referring

caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.

**4. Nondiscrimination**

The County must provide Services to DHS clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Agreement Services must reasonably accommodate the cultural, language and other special needs of clients.

**5. Gender Specific Services**

Services provided under this Agreement must be gender specific. "Gender specific Services" refers to treatments, interventions, educational programs and approaches that comprehensively address the unique needs, strengths and risk factors of each gender and fosters positive gender identity development.

**6. Diversity and Cultural Competency**

- a. DHS is committed to providing equal opportunity in employment regardless of race, religion, color, national origin, marital status, sex, sexual orientation, gender identity, age, veteran's status or mental or physical disability. DHS is committed to equal access, Service excellence and equity for all Oregonians. DHS strives to promote equitable health and human Services for communities of color, Indian tribal governments, and other multicultural groups as well as underrepresented populations through culturally specific and culturally competent approaches.
- b. County staff must uphold these values and create and sustain welcoming environments that are inclusive and respectful of staff, Participants and partners. County must ensure that every interaction with our Participants and with each other guarantees fair treatment, access, opportunities and advancement, and inclusion. County must take into consideration the diverse needs and cultural considerations of the community they serve.

**7. Participant Materials Review Requirement**

County shall submit all materials ("Materials") to DHS' District office for review and final approval prior to providing Materials to Participants. If DHS does not provide written approval or written required modifications to County within seven (7) business days of County submission, County may use the Materials. County shall resubmit Materials if County proposes modification to the Materials or DHS requests additional review.

**8. Dispute Resolution**

County shall attempt to resolve any disputes regarding the performance of Services with the Agreement Administrator. If resolution cannot be achieved, County has the right to request review by DHS' TANF Manager. DHS' TANF Manager's decision is final.

9. **Media Disclosure.**

The County will not provide information to the media regarding a recipient of Services purchased under this Agreement without first consulting the DHS office that referred the child or family. The County will make immediate contact with the DHS office when media contact occurs. The DHS office will assist the County with an appropriate follow-up response for the media.

10. **Domestic Violence**

County shall comply with, and ensure its employees comply with, ORS 659A.270 through 659A.290 which provides protections to employees because of domestic violence, sexual assault or stalking. County shall ensure that appropriate guidance and training, consistent with DHS of Administrative Services Statewide Policy 50.010.04 is provided to County's managers, human resources staff and employees regarding domestic violence, sexual assault and stalking issues.

11. **Mandatory Reporting**

The County shall immediately report any evidence of child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 to 419B.045). If law enforcement is notified, the County shall notify the referring DHS caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.

12. **Participant Appeal**

County shall establish a system through which Participants may present grievances about the performance of Services by County. County shall maintain a record of grievances and their disposition. At initiation of Services, County shall advise the Participants in writing of this provision. County shall notify DHS of all unresolved grievances.

13. **Breastfeeding Initiative**

Whenever possible, County shall provide for its employees, visitors and all DHS Participants who are breastfeeding others, a private room with the ability to be locked from the inside, so that breastfeeding mothers may have a place to:

- a. Nurse an infant brought in during lunch breaks or during Participant or visitor visitation to the County office, or
- b. Pump breast milk to be stored for later use.
- c. The room shall have accessible electrical outlets for electric breast pump use and a sink close by for hand washing and rinsing out storage containers. The room shall contain a comfortable chair, a small table and waste basket. A sign up sheet will be posted to ensure that all those needing the room will have the opportunity to use it.

14. **Compliance with Applicable Laws**

Without limiting the generality of the Compliance with Law of Exhibit B, Standard Terms and Conditions, County shall comply with, Public Law 103-227, Part C -

Environmental Tobacco Smoke (Pro-Children Act of 1994); applicable sections of Public Law 104-193: Title I Block Grants for Temporary Assistance for Needy Families (TANF); Title II Supplemental Security Income; Title III Child Support; Title IV, Part A of the Social Security Act as amended Welfare to Work; Title V Child Protection; Title VI Child Care.

15. **Americans with Disability Act Posting**

County shall post a sign, approved by DHS, at its Service locations informing individuals of the opportunity to request and receive the Services specified under Section 2(b) of the Standard terms and Conditions and required under the American with Disabilities Act at no cost to the individual.

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## EXHIBIT B

### Standard Terms and Conditions

1. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and DHS, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
3. **Independent Contractors.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
4. **Representations and Warranties.**
  - a. County represents and warrants as follows:
    - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
    - (2) **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by

County and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is a party or by which County may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement.

- (3) Binding Obligation. This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.
- (7) County's operations and those of its subcontractors hereunder with respect to this Agreement shall be in full compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act, 2009 ("HITECH"), and the implementing regulations thereunder.

**b.** DHS represents and warrants as follows:

- (1) Organization and Authority. DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which DHS is a party or by which DHS may be bound or affected. No authorization, consent, license, approval of, filing or

registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by DHS of this Agreement, other than approval by the Department of Justice if required by law.

- (3) **Binding Obligation.** This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**5. Funds Available and Authorized Clause.**

a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is

not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed to be withheld, County shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. **Compliance with Law.** Nothing in this Agreement shall require County or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.

8. **Ownership of Intellectual Property.**

a. **Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:

- (1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.
- (2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or County.

b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).

c. If state or federal law requires that DHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that the DHS or the United States own the intellectual property, then County shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, DHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.

d. County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. **County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:
- a. County fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein;
  - b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
  - c. County (1) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (8) takes any action for the purpose of effecting any of the foregoing; or
  - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
10. **DHS Default.** DHS shall be in default under this Agreement upon the occurrence of any of the following events:
- a. DHS fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
  - b. Any representation, warranty or statement made by DHS herein or in any documents or reports relied upon by County to measure performance by DHS is untrue in any material respect when made.
11. **Termination.**
- a. **County Termination.** County may terminate this Agreement:
    - (1) For its convenience, upon at least 30 days advance written notice to DHS;

- (2) Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement, as determined by County in the reasonable exercise of its administrative discretion;
- (3) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

**b. DHS Termination.** DHS may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;

- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;
  - (6) Immediately upon written notice to County, if DHS determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.
- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.
12. **Effect of Termination**
- a. **Entire Agreement.**
    - (1) Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
    - (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.
  - b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.
13. **Limitation of Liabilities.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.
14. **Insurance.** County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.
15. **Records Maintenance; Access.** County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any 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 in such a manner as 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 DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall

have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants County or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to 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.
17. **Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
  - a. County shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
  - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, County shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8,

15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.

21. **No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
23. **Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

**DHS:** Office of Contracts & Procurement  
250 Winter St NE, Room 306  
Salem, OR 97301  
Telephone: 503-945-5818

26. **Headings.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
29. **Construction.** *[Reserved]*
30. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

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

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the 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 the State in such

proportion as is appropriate to reflect the relative fault of the County on the one hand and of the 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 the County on the one hand and of the 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. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

31. **Indemnification by Subcontractors.** County shall take all reasonable steps to cause its contractor(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 and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
32. **Stop-Work Order.** DHS may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
  - a. Cancel or modify the stop work order by a supplementary written notice; or
  - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

## EXHIBIT C

### Subcontractor Insurance Requirements

**General Requirements.** County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to DHS. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with whom the county directly enters into a contract. It does not include a subcontractor with whom the contractor enters into a contract.

1. **Workers' Compensation.** Insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

2. **Professional Liability.**

Required by DHS  Not required by DHS.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than the following, as determined by DHS:

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015:.... \$2,000,000.

From July 1, 2015 and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015:.... \$4,000,000.

From July 1, 2015 and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

**3. Commercial General Liability.**

Required by DHS  Not required by DHS.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to DHS. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by DHS:

**Bodily Injury/Death:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015:....\$2,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015: ...\$4,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

**AND**

**Property Damage:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2014:....\$200,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2014:....\$600,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

**4. Automobile Liability.**

Required by DHS  Not required by DHS.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by the DHS:

**Bodily Injury/Death:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015: ...\$2,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015:.....\$4,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

**AND**

**Property Damage:**

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2014:.....\$200,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:

From commencement of the Contract term through June 30, 2014: .....\$600,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

5. **Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
6. **"Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
7. **Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

8. **Certificate(s) of Insurance.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

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## EXHIBIT D

### Required Federal Terms and Conditions

**General Applicability and Compliance.** Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

1. **Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
2. **Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
3. **Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental

Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - e. No part of any federal funds paid to County under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative

action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. **HIPAA Compliance.** As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 943-014-0400 through OAR 943-014-0465 . County is a Business Associate of DHS and therefore must comply with OAR 943-014-0400 through OAR 943-014-0465 and the Business Associate requirements set forth in 45 CFR 164.502 and 164.504. County's failure to comply with these requirements shall constitute a default under this Agreement and such default shall not be subject to Exhibit B, Limitation of Liabilities.

- a. **Consultation and Testing.** If County reasonably believes that the County's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the DHS Information Security Office. County or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
- b. **Data Transactions Systems.** If County intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.

c. **Business Associate Agreement is found in Exhibit F.**

7. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.
8. **Audits.**
  - a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
  - b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.
9. **Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
10. **Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to DHS clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any

criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of this Agreement.

11. **Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
12. **Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:
  - a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).
  - b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
  - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
  - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

**13. Agency-based Voter Registration.** County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

**14. Disclosure.**

- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.
- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 14. To DHS. DHS reserves the right to take such action required by law, or where DHS has

discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

**15. Federal Intellectual Property Rights Notice.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms "grant" and "award" refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
  - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
  - (2) Any rights of copyright to which a grantee, subgrantee or a county purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.

## EXHIBIT F

### ***BUSINESS ASSOCIATE AGREEMENT***

This is a Business Associate Agreement (“BAA”) between the Department of Human Services (“DHS”) and Clackamas County acting by and through Clackamas County Community Solutions (“Clackamas”). This Business Associate Agreement, when effective, supersedes and replaces any previous Business Associate Agreement between the parties.

#### **RECITALS**

- A. DHS is, at times, a business associate of the health care component of the Oregon Health Authority (OHA), a covered entity, because it performs some functions on behalf of OHA that involve the creation, receipt, maintenance or transmission of PHI and for purposes of this Business Associate Agreement, is acting in its capacity as a business associate of OHA; and
- B. The County creates, receives, maintains or transmits PHI and Electronic Protected Health Information (“EPHI”) in the performance of its obligations under Agreement # 144680 (the Agreement) on behalf of DHS; and
- C. The Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), requires a business associate to enter into a Business Associate Agreement with a subcontractor that creates, receives, maintains or transmits PHI on behalf of a business associate; and
- D. Both DHS and County are committed to compliance with the standards set forth in HIPAA as may be amended further from time to time, in the performance of their obligations under the Business Associate Agreement.

**NOW, THEREFORE**, in consideration of mutual and valuable consideration which the parties hereby acknowledge as received, the parties agree as follows:

#### **AGREEMENT**

The parties agree that the following terms and conditions shall apply to the performance of their obligations under the Agreement, effective July 1, 2013. Capitalized terms used, but not otherwise defined in this Business Associate Agreement, shall have the same meaning as those terms in the Privacy Rule and Security Rule, 45 CFR 160 and 164.

#### **1. OBLIGATIONS AND ACTIVITIES OF COUNTY**

County shall:

- (a) Not use or disclose PHI or EPHI other than as permitted or required by the Agreement or this Business Associate Agreement between the parties., as permitted by the Privacy Rule, the Security Rule or as required by law.
- (b) Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of the PHI and EPHI other than as provided for by the Business Associate Agreement and the Agreement, or as required by law.
- (c) Implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, or transmits on behalf of DHS. County represents that the PHI and EPHI it creates, receives, maintains, or transmits on behalf of DHS is:
  - (i) Ensured as to its confidentiality, integrity, and availability,
  - (ii) Protected against threats or hazards to its security or integrity, and
  - (iii) Protected against unauthorized use or disclosure.
- (d) Create and maintain documentation that demonstrates its compliance with 45 C.F.R. 164.308, 164.310, 164.312 and 164.316. Minimally, County shall:
  - (i) Maintain PHI and EPHI in a secured server and only permit access to PHI and EPHI by employees or subcontractors who have signed confidentiality agreements and have a need to know the information maintained in the PHI and EPHI for the purposes set forth in the Agreement and this Business Associate Agreement. County represents that its workforce complies with the security standards, including policies and procedures, that County maintains pursuant to the Security Rule.
  - (ii) Document the level of security and privacy protection required under this Agreement in a security risk management plan. County shall make this plan available to DHS upon request.
  - (iii) Provide DHS, as reasonably requested, access to County's data officers, agents, contractors, subcontractors, employees, facilities, equipment, records, and any other information reasonably necessary to:
    - (A) Determine County's compliance with the terms and conditions of this Business Associate Agreement.
    - (B) Determine whether or not to continue to provide PHI or EPHI, in whole or in part, under this Business Associate Agreement.
    - (C) Verify documentation of a written security risk management plan.
    - (D) Meet any applicable state or federal laws, rules and regulations regarding use and disclosure relating to PHI and EPHI.
    - (E) Allow DHS's Information Security Office to audit facilities, equipment, processes, and procedures.
- (e) Mitigate, to the extent practicable, any harmful effect that is known to County of a use or disclosure of PHI or EPHI by County in violation of the requirements of the Business Associate Agreement.

(f) Report to DHS, as promptly as possible, any use or disclosure of the PHI or EPHI not provided for by the Agreement or this Business Associate Agreement, of which it becomes aware.

(g) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI or EPHI on behalf of the County agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.

(h) Provide access, at the request of DHS, and in the time and manner designated by DHS, to PHI and EPHI in a Designated Record Set, to DHS or, as directed by DHS, to an Individual in order to meet the requirements under 45 CFR 164.524.

(i) Make any amendment(s) to PHI and EPHI in a Designated Record Set that the DHS directs or agrees to pursuant to 45 CFR 164.526 at the request of DHS or an Individual, and in the time and manner designated by DHS.

(j) Make internal practices, books, and records, including policies and procedures and any PHI or EPHI, relating to the creation, receipt, maintenance or transmission of PHI or EPHI on behalf of DHS, available to DHS or to the Secretary of United States Department of Health and Human Services (Secretary), within the time and in the manner designated by DHS or the Secretary, for purposes of the Secretary determining DHS's compliance with the Privacy Rule or Security Rule.

(k) Refer requests for disclosures of PHI and EPHI to DHS for response. To the extent County discloses PHI or EPHI for purposes not related to services provided under the Agreement but are otherwise permitted by this Business Associate Agreement or permitted by the Privacy Rules, County agrees to document such disclosures to the extent such documentation is required for DHS to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

(l) Provide to DHS or an Individual, in time and manner to be designated by DHS, information collected in accordance with Section 2(i) of this Business Associate Agreement, to permit DHS to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI in accordance with 45 CFR 164.528.

(m) In the event of Discovery of a Breach of Unsecured Protected Health Information:

(i) Notify DHS of such Breach without unreasonable delay, and in any event no later than thirty (30) days after the discovery of the Breach. A breach is considered "discovered" as of the first day on which the Breach is known or, exercising reasonable diligence would have been known, to County or any employee or agent of County, other than the individual committing the breach. Notification shall include identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by County to have been accessed, acquired or

disclosed during such Breach and any other information as may be reasonably required by DHS necessary for DHS to meet its notification obligations;

- (ii) Confer with DHS as to the preparation and issuance of an appropriate notice to each individual whose Unsecured Protected Health Information has been, or is reasonably believed by County to have been accessed, acquired or disclosed as a result of such Breach;
- (iii) Where the Breach involves more than 500 individuals, confer with DHS as to the preparation and issuance of an appropriate notice to prominent media outlets within the State or as appropriate, local jurisdictions; and,
- (iv) Confer with DHS in a timely manner as to the preparation and issuance of an appropriate notice to the Secretary of Unsecured Protected Health Information that has been acquired or disclosed in a Breach in order for the County to meet its obligations under 45 CFR 164.408. County understands that if the Breach was with respect to 500 or more individuals, County must provide notice to the Secretary contemporaneously with the notices to individuals. If the Breach was with respect to less than 500 individuals, a log may be maintained of any such Breach and the log shall be provided to the Secretary by the County annually documenting such Breaches occurring during the year involved.
- (v) Except as set forth in (vi) below, provide notifications to individuals without unreasonable delay and in no case later than 60 calendar days after the discovery of a Breach. Any notice shall be provided in the manner required by the HITECH Act, sec 13402(e) and (f), Public Law 111-5, 45 CFR 164.404 through 164.410 and as agreed upon by DHS.
- (vi) Delay any notification required by this section if requested by a law enforcement official in accordance with 45 CFR 164.412.
- (vii) For purposes of this section, the terms "Unsecured Protected Health Information" and "Breach" shall have the meaning set forth in 45 CFR § 164.402. A Breach will be considered as "Discovered" in accordance with 45 CFR 164.410(a)(2).

(n) Be liable to DHS, and indemnify DHS for any and all costs incurred by DHS, including, but not limited to, costs of issuing any notices required by HITECH or any other applicable law, as a result of County's Breach of Unsecured Protected Health Information.

### **3. PERMITTED USES AND DISCLOSURES BY COUNTY.**

(a) General Use and Disclosure Provisions.

(1) Except as otherwise limited or prohibited by this Business Associate Agreement, County may use or disclose PHI and EPHI to perform functions, activities, or services for, or on behalf of, DHS as specified in the Agreement and this Business Associate Agreement, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, or other applicable federal or state laws or regulations if done by DHS, or the minimum necessary policies and procedures of DHS.

(2) All applicable federal and state confidentiality or privacy statutes or regulations, and related procedures, continue to apply to the uses and disclosures of information under this Business Associate Agreement, except to the extent preempted by the HIPAA Privacy Rule and Security Rule.

(3) County may use or disclose PHI or EPHI as required by law.

(b) Specific Use and Disclosure Provisions.

(1) Except as otherwise limited in this Business Associate Agreement, County may use PHI and EPHI for the proper management and administration of the County or to carry out the legal responsibilities of the County.

(2) Except as otherwise limited in this Business Associate Agreement, County may disclose PHI and EPHI for the proper management and administration of the County, provided that disclosures are Required By Law, or County obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the County of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) County may use PHI and EPHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

(4) County may not aggregate or compile DHS's PHI or EPHI with the PHI or EPHI of other Covered Entities unless the Business Associate Agreement permits County to perform Data Aggregation services. If the Business Associate Agreement permits County to provide Data Aggregation services, County may use PHI and EPHI to provide the Data Aggregation services requested by DHS as permitted by 45 CFR 164.504(e)(2)(i)(B), subject to any limitations contained in this Business Associate Agreement. If Data Aggregation services are requested by DHS, County is authorized to aggregate DHS's PHI and EPHI with PHI or EPHI of other Covered Entities that the County has in its possession through its capacity as a County to such other Covered Entities provided that the purpose of such aggregation is to provide DHS with data analysis relating to the Health Care Operations of DHS. Under no circumstances may County disclose PHI or EPHI of DHS to another Covered Entity absent the express authorization of DHS.

#### **4. OBLIGATIONS OF DHS.**

(a) DHS shall notify County of any limitation(s) in its notice of privacy practices of DHS in accordance with 45 CFR 164.520, to the extent that such limitation may affect County's use or disclosure of PHI and EPHI. DHS may satisfy this obligation by providing County with DHS's most current Notice of Privacy Practices.

(b) DHS shall notify County of any changes in, or revocation of, permission by Individual to use or disclose PHI or EPHI, to the extent that such changes may affect County's use or disclosure of PHI and EPHI.

(c) DHS shall notify County of any restriction to the use or disclosure of PHI or EPHI that DHS has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect County's use or disclosure of PHI or EPHI.

#### **5. PERMISSIBLE REQUESTS BY DHS.**

DHS may, upon request of the DHS, conduct an audit and inspection of County with respect to County's compliance with the terms of this Business Associate Agreement and applicable law for the establishment of policies and procedures for the safeguarding of any PHI and EPHI provided to County by DHS. County shall implement any recommendations of DHS resulting from such audit and inspection as may be reasonably necessary to ensure compliance with the terms of this Agreement and applicable law for the safeguarding of any PHI and EPHI provided to County by DHS.

#### **6. TERM AND TERMINATION.**

(a) Effective Date; Term. This Business Associate Agreement shall be effective on the date on which all parties have executed it and all necessary approvals, if any, have been granted. This Business Associate Agreement shall terminate on the earlier of (i) the date of termination of the Agreement, or (ii) the date on which termination of the Business Associate Agreement is effective under Section 6(b).

(b) Termination for Cause. In addition to any other rights or remedies provided in this Business Associate Agreement, upon either the DHS's or County's knowledge of a material breach by the other party of that party's obligations under this Business Associate Agreement, the party not in breach shall either:

(1) Notify the other party of the breach and specify a reasonable opportunity in the Notice of Breach to the party in breach to cure the breach or end the violation, and terminate the Business Associate Agreement if the party in breach does not cure the breach of the terms of this Agreement or end the violation within the time specified;

(2) Immediately terminate the Contract if the party in breach has breached a material term of this Business Associate Agreement and cure is not possible in the reasonable judgment of the party not in breach; or

(3) If neither termination nor cure is feasible, the party not in breach shall report the violation to the Secretary.

(4) The rights and remedies provided in this Business Associate Agreement are in addition to any rights and remedies provided in the Agreement.

(c) Effect of Termination.

(1) Except as provided in paragraph (2) of this Section 6(c), upon termination of the Agreement and the Business Associate Agreement, for any reason, County shall, at DHS's option, return or destroy all PHI and EPHI received from DHS, or created or received by County on behalf of DHS. This provision shall apply to PHI and EPHI that is in the possession of County or agents of County. County shall retain no copies of the PHI or EPHI.

(2) In the event that County determines that returning or destroying the PHI or EPHI is infeasible, County shall provide to DHS notification of the conditions that make return or destruction infeasible. Upon DHS's written acknowledgement that return or destruction of PHI or EPHI is infeasible, County shall extend the protections of this Business Associate Agreement to such PHI and EPHI and limit further uses and disclosures of such PHI and EPHI to those purposes that make the return or destruction infeasible, for so long as County maintains such PHI or EPHI.

## 7. MISCELLANEOUS.

(a) Regulatory References. A reference in this Business Associate Agreement to a section in HIPAA, the Privacy Rule, Security Rule, or the HITECH Act means the section in effect as of the effective date of this Agreement or as the Privacy Rule or Security Rule may be subsequently amended from time to time.

(b) Agreement; Waiver. The parties agree to take such action as is necessary to amend the Business Associate Agreement from time to time as is necessary for DHS to comply with the requirements of the Privacy Rule, Security Rule, HIPAA and the HITECH Act. No provision hereof shall be deemed waived unless in writing, duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy under this Business Associate Agreement.

(c) Survival. The respective rights and obligations of County under Section 6(c), this Section 7(c), and Section 7(e) of this Business Associate Agreement shall survive the termination of the Business Associate Agreement.

(d) Interpretation; Order of Precedence. Any ambiguity in this Business Associate Agreement shall be resolved to permit DHS to comply with the Privacy Rule and the Security Rule. This Business Associate Agreement does not supersede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. In the event of any conflict

between the provisions of the Business Associate Agreement and the Privacy Rule or Security Rule, the Privacy Rule and Security Rule shall control.

(e) No Third-Party Beneficiaries. DHS and County are the only parties to this Business Associate Agreement and are the only parties entitled to enforce its terms. Nothing in this Business Associate Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Business Associate Agreement.

(f) Successors and Assigns. The provisions of this Business Associate Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

# Approval of Previous Business Meeting Minutes

January 30, 2014

(minutes attached)

# **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

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

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

**Thursday, January 30, 2014 - 10:00 AM**

**Public Services Building**

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

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith**

## **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

## **II. CITIZEN COMMUNICATION**

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

1. Lewis Colman, Boring – concern about Ambulance decision.
2. Paul Phillips, Gervais - concern about Ambulance decision.
3. Eric Bishton, Tigard - concern about Ambulance decision.
4. Alli Sair, Milwaukie - concern about Ambulance decision.
5. Christina Santoyo, Oregon City - concern about Ambulance decision.
6. Charles Savoie, Milwaukie - concern about Ambulance decision.
7. Shirley Soderberg, Milwaukie - concern about Ambulance decision.
8. Jo Haverkamp, Oregon City - concern about Ambulance decision.
9. Maryanna Moore, Gladstone - concern about Ambulance decision.
10. James Lemmon, Mulino - concern about Ambulance decision.
11. Frank Magdlen, Milwaukie – asked a couple budgetary questions if there is a potential Ambulance lawsuit.

*~Board Discussion~*

12. Cyndi Lewis Wolfram, Milwaukie – commented on the Ambulance issue and Josephine Estates issue.
13. Roger Stafford, Milwaukie – concerns regarding a proposed development, Josephine Estates.
14. Sandy Moreno, Milwaukie – concerns about the Josephine Estates development.
15. Mark Fogelberg, Milwaukie - concerns about the Josephine Estates development.
16. Ginny Davidson, Milwaukie - concern about Ambulance decision.

*~Board Discussion~*

Mike McCallister, Planning Department explained the proposed 36 lot subdivision and stated it is scheduled for a public hearing before the Hearings Offices on February 13, 2014.

17. Jon Cottrell, Milwaukie - concerns about the Josephine Estates development.
18. Pat Russell, Milwaukie – comments regarding the TSP updates, concerns about the Josephine Estates development and notification process.
19. Jason Rice, City of Milwaukie – wanted to thank staff for work on the TSP updates.
20. Les Poole, Gladstone – process with citizen involvement.
21. Jennifer Valley, Happy Valley spoke about the passage of HB 3460 and the new revenue streams. She is a medical marijuana grower.

**III. READING AND ADOPTION OF PREVIOUSLY APPROVED LAND USE ORDINANCE** *(No public testimony on this item)*

1. Reading and Adoption of Comprehensive Plan and Zoning and Development Ordinance Amendments - ZDO-246, (Transportation System Plan TSP) Update - *Previously Approved at the December 11, 2013 Land Use Hearing*

Nate Boderman, County Counsel presented the staff report.

Chair Ludlow asked for a motion.

**MOTION:**

Commissioner Schrader: I move we read ZDO-246 by title only.

Commissioner Bernard: Second.

Clerk to call the poll:

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye - the motion is approved 5-0.

Clerk read ZDO-246 by title only, Chair Ludlow asked for a motion for adoption.

**MOTION:**

Commissioner Bernard: I move we adopt ZDO-246, Transportation System Plan, Amending Chapters 5 and 10, and Appendix B, and making Conforming Amendments to Chapters 3 and 4 of the Clackamas County Comprehensive Plan and Amending the Sections stated and making Conforming Amendments to the Sections stated of the Clackamas County Zoning and Development Ordinance as Previously Approved at the December 11, 2013 public Land Use Hearing.

Commissioner Smith: Second.

Clerk to call the poll:

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Commissioner Smith: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion is approved 5-0.

2. Reading and Adoption of Zoning and Development Ordinance Amendments - ZDO-247, Natural Resource Zoning Districts Update *Previously Approved at the December 18, 2013 Land Use Hearing*

Nate Boderman, County Counsel presented the staff report.

Chair Ludlow asked for a motion.

**MOTION:**

Commissioner Schrader: I move we read ZDO-247 by title only.

Commissioner Bernard: Second.

Clerk to call the poll:

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye - the motion is approved 5-0.

Clerk read ZDO-247 by title only, Chair Ludlow asked for a motion for adoption.

**MOTION:**

Commissioner Savas: I move we adopt ZDO-247, Natural Resource Zoning Districts, Amending the Sections stated of the Clackamas County Zoning and Development Ordinance as Previously Approved at the December 18, 2013 public Land Use Hearing.

Commissioner Schrader: Second.

*~Board Discussion~*

Clerk to call the poll:

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Commissioner Smith: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion is approved 5-0.

**IV. PUBLIC HEARING**

1. Resolution No. **2014-05** for Approval of a Clackamas County Supplemental Budget (Greater than Ten Percent and Budget Reductions) for Fiscal Year 2013-2014

Diane Padilla, Budget Manager presented the staff report.

Chair Ludlow opened the Public Hearing and asked if anyone wished to speak/ Jennifer Valley, Happy Valley spoke about the passage of HB 3460 and the new revenue streams.

Chair Ludlow stated this has no relation to the public hearing and will re-open Citizen Communication for Ms. Valley comments – see page 1 number 21.

Chair Ludlow closed the Public Hearing and asked for a motion.

**MOTION:**

Commissioner Bernard: I move we approve the Resolution for a Clackamas County Supplemental Budget (Greater than Ten Percent and Budget Reductions) for Fiscal Year 2013-2014.

Commissioner Schrader: Second.

*~Board Discussion~ Commissioner Savas explained that he will vote not on this issue.*

Clerk to call the poll:

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: No.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion is approved 4-1.

**V. DISCUSSION ITEMS**

***~NO DISCUSSION ITEMS SCHEDULED***

**VI. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the consent agenda by title – he then asked for a motion.

**MOTION:**

Commissioner Bernard: I move we approve the consent agenda.

Commissioner Smith: Second.

*~Board Discussion – Commissioner Savas will vote no due to the Budget items on the Consent Agendas.*

Clerk to call the poll:

Commissioner Schrader: Aye.  
Commissioner Smith: Aye.  
Commissioner Bernard: Aye.  
Commissioner Savas: No.  
Chair Ludlow: Aye - the motion is approved 4-1.

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

1. Approval of a Revenue Agreement with Central City Concern for Funding Mental Health Services at Chez Ami Apartments – *Behavioral Health*

**B. Finance Department**

1. Resolution No. **2014-06** for Approval of a Clackamas County Supplemental Budget (Less than 10%) for Fiscal Year 2013-2014
2. Resolution No. **2014-07** for Approval of Clackamas County Budgeting of New Specific Purpose Revenue for Fiscal Year 2013-2014
3. Resolution No. **2014-08** for Approval of a Clackamas County Transfer of Appropriations for Fiscal Year 2013-2014

**C Elected Officials**

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

**VII. NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

1. Resolution No. **2014-09** for Approval of the North Clackamas Parks and Recreation District Transfer of Appropriations for Fiscal Year 2013-2014
2. Resolution No. **2014-10** for Approval of the North Clackamas Parks and Recreation District Supplemental Budget (Less than 10%) for Fiscal Year 2013-2014
3. Approval of Amendment No. 2 to the Intergovernmental Annexation and Service Agreement between North Clackamas Parks & Recreation District and the City of Happy Valley

**VIII. DEVELOPMENT AGENCY**

1. Approval of an Easement and Equitable Servitudes Agreement with the State of Oregon, by and through its Department of Environmental Quality for a Portion of the Capps Road Property, also known as the Clackamas Industrial Area Opportunity Site

**IX. COUNTY ADMINISTRATOR UPDATE**

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

**X. COMMISSIONERS COMMUNICATION**

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

**MEETING ADJOURNED – 12:25 PM**



# Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

Board of County Commissioners  
Clackamas County

Members of the Board:

## Approval of an Authorization to Purchase Mobile Data Computers from CDW-Government

<b>Purpose/Outcomes</b>	Purchase Mobile Data Computers from CDW Government
<b>Dollar Amount and Fiscal Impact</b>	The Sheriff's Office has budgeted \$172,550 for this purchase in the FY-2013-14.
<b>Funding Source</b>	216-1602-00-421210
<b>Safety Impact</b>	Provides law enforcement the ability to receive critical information when dealing with dangerous persons/situations
<b>Duration</b>	None
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Sgt. Dave Northcraft 503.969.1994
<b>Contract No.</b>	N/A

Over the last 15 years, the Clackamas County Sheriff's Department has utilized ruggedized mobile data computers (MDC's) for communication with CCOM, report writing, Class databases and geo-locating addresses of dispatched calls. The department uses Panasonic Toughbook computers which are mounted in our patrol vehicles as MDC's. These Toughbooks have proven to hold up extremely well in the mobile law enforcement environment where heavy vibration and extreme temperatures are prevalent. Non rugged computers are not made to withstand this type of extreme mobile environment.

The Sheriff's Office currently has 245 Panasonic Toughbook Mobile Data computers in Patrol, Detectives, Civil, Admin and Special Units. Panasonic's warranty covers the first three years of each computer. After the warranty period, repair costs are billed at \$125/hr for labor, plus the cost of parts. We evaluate every out-of-warranty repair to determine the necessity of fixing the damaged laptop vs. the cost.

The current replacement plan of the Sheriff's office is to maintain the fleet of MDC's with equipment not older than 5 years of age. This is well beyond the 3 year Panasonic warranty period, but has proven to be a realistic end of life age for these computers in our mobile environment over the last 15 years.

Laptops kept in the field over 5 years of age prove to be unreliable to the deputy on the street, which can compromise their safety related to the receiving of critical information when dealing with dangerous persons/situations. Additionally, the cost of maintaining and repairing MDC's over 5 years of age is very expensive and they do not have the speed or hard drive capacity to run current applications used by the Sheriff's Office.

*"Working Together to Make a Difference"*

Detectives, Command staff and Special Unit personnel do not always require fully rugged laptops as MDC's because in many cases they are not mounted in vehicles. In these instances we purchase "Semi-Rugged" Panasonic Toughbooks that have the same warranty and reliability but are less expensive.

The Sheriff's Department has budgeted funds to purchase 30 replacement Panasonic fully rugged Toughbooks and 20 Semi-rugged Toughbooks for the FY-2013-14. These new MDC's will replace 50 older – out of warranty models in the Patrol, Civil, Community Corrections, Command Staff and Detectives Divisions.

This request is to utilize budgeted funds to purchase the Toughbook models CF-31WAP7U1M and CF-53SCVKZ1M. These model Toughbooks are currently deployed in the field and they performs exceptionally well with all the Sheriff's Office current mobile applications and vehicle installations. These models are equipped with aircards which maintain connectivity to the Sheriff's network allowing deputies' access to critical law enforcement data such as mug shots, DMV photos, criminal history, other agency databases and the electronic submission of police reports from the field to Sheriff's Records.

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0400, Authority for Cooperative Procurements. The State of Oregon through the Western States Contracting Alliance (WSCA) competitively awarded a contract for Panasonic Mobile Data Computers and accessories (contract B27172 9796)

RECOMMENDATION:

Staff respectfully recommends that the Board approve the purchase of 50 Mobile Data Computers from CDW Government.

Respectfully submitted

  
Matt Ellington  
Undersheriff

Placed on the Board Agenda of February 27<sup>th</sup>, 2014 by the Purchasing Division



NANCY DRURY  
DIRECTOR

DEPARTMENT OF EMPLOYEE SERVICES

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

February 27, 2014

Board of Commissioners  
Clackamas County

Members of the Board

Approval of the Administrative Services Agreement with Moda Health for Claims  
Administration of the Self-insured Dental Plan for the  
Period of January 1, 2014 through December 31, 2014

<b>Purpose/Outcome</b>	The Administrative Services Agreement with Moda Health for claims administration provides formal approval of the agreement negotiated with Moda for administration of the County's self-insured dental plan for the 2014 plan year.
<b>Dollar Amount and Fiscal Impact</b>	For 2014, the administration fee remained the same per month at \$6.02 per employee. The expected annual cost is \$105,669.
<b>Funding Source</b>	The administration fee is included in the premiums that are paid into the self-insurance fund from the operating budgets of County departments, by retirees and COBRA participants and by outside agencies contracting with the County to provide benefits administration.
<b>Safety Impact</b>	Supports dental health and benefits package for employees.
<b>Duration</b>	January 1, 2014 to December 31, 2014
<b>Previous Board Action/Review</b>	The administration fee was reviewed and approved by the Board of County Commissioners at their October 22 <sup>nd</sup> , 2013 Study Session.
<b>Contact Person</b>	Carolyn Williams, Benefits Manager- Employee Services Risk and Benefits Division - 503-742-5470

**BACKGROUND:**

Each year at renewal time, Moda provides the County with the contract changes for the following contract (calendar) year. These contract changes are reviewed and approved where necessary by the Benefits Review Committee and by the Board of County Commissioners in a study session. It is not until several months before the actual contract documents are provided by Moda.

The Benefits Review Committee has the authority and responsibility for reviewing, developing and designing medical, dental, life and disability insurance programs for nonrepresented employees and employees of the member unions. The Committee may

also review and make recommendations to the Board of County Commissioners regarding other benefit plans and issues.

The Benefits Review Committee was established by agreement between the Board of County Commissioners and the following collective bargaining groups: AFSCME-CCOM, AFSCME-DTD, AFSCME-Utilities, Employee's Association, Housing Authority Employee's Association and FOPPO.

Clackamas County has self-funded dental insurance for the benefit of employees and former employees and contracts with Moda to provide claims administration and related services.

Due to the length of the contract documents, complete sets are on file at the Department of Employee Services. County Counsel has approved the administrative services agreement.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the Administrative Services Agreement with Moda Health for the 2014 plan year.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Carolyn Williams".

Carolyn Williams  
Benefits Manager, Department of Employee Services



## OREGON Dental Group Policy

### Clackamas County

Delta Dental Premier Plan

Effective Date: January 1, 2014

Group No. 10000174

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agenda Item

#### CLACKAMAS COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Chair

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

Oregon Dental Service provides dental claims payment services only and does not assume financial risk or obligation with respect to payment of claims.

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## **SECTION 1. WELCOME**

This handbook describes the main features of the Group's dental plan ("the Plan"), but does not waive any of the conditions of the Plan as set out in the Plan Document.

The Plan is self-funded and the Group has contracted with ODS to provide claims and other administrative services. ODS is part of the Moda Health organization.

Members may direct questions to one of the numbers listed below or access tools and resources on Moda Health's personalized member website, myModa, at [www.modahealth.com](http://www.modahealth.com). myModa is available 24 hours a day, 7 days a week allowing members to access plan information whenever it's convenient.

ODS reserves the right to monitor telephone conversations and e-mail communications between its employees and its members for legitimate business purposes as determined by ODS. The monitoring is to ensure the quality and accuracy of the service provided by employees of ODS.

This handbook may be changed or replaced at any time, by the Group, without the consent of any member. The most current handbook is available on myModa, accessed through the Moda Health website. All plan provisions are governed by the Group's agreement with ODS. This handbook may not contain every plan provision.

### **1.1 MEMBER RESOURCES**

**Moda Health Website** (log in to myModa)  
[www.modahealth.com](http://www.modahealth.com)

**Dental Customer Service Department**  
Portland 503-265-2965; Toll-free 888-217-2365  
En Español 503-265-2963; Llamado gratis 877-299-9063

**Telecommunications Relay Service** for the hearing impaired  
711

**ODS**  
P.O. Box 40384  
Portland, Oregon 97240

## SECTION 2. USING THE PLAN

ODS' dental plans are easy to use and cost effective. If members choose a participating Premier dentist from the ODS Delta Dental Premier Dental Directory (which is available on Moda Health's website at [www.modahealth.com](http://www.modahealth.com) under "Find Care"), all of the paperwork takes place between ODS and the dentist's office. More than 90% of all licensed dentists in Oregon are ODS participating Delta Dental Premier dentists. For travelers and employees outside Oregon, ODS' national affiliation with Delta Dental Plans Association provides offices and/or contacts in every state. Also, dental claims incurred any place in the world may be processed in Oregon.

Members needing dental care may go to any dental office. However, **there are differences in reimbursement for participating Delta Dental Premier dentists and non-participating dentists or dental care providers.** While a member may choose the services of any dentist, ODS does not guarantee the availability of any particular dentist.

At an initial appointment, members should tell the dentist that they have dental benefits through ODS. Members will need to provide their subscriber identification number and ODS group number to the dentist. These numbers are located on the I.D. card.

For expensive treatment plans, ODS provides a predetermination service. The dentist may submit a predetermination request to get an estimate of what the Plan would pay. The predetermination will be processed according to the Plan's current benefits and returned to the dentist. The member and his or her dentist should review the information before beginning treatment.

For questions about the Plan, members should contact Customer Service.

This handbook describes the benefits of the Plan. It is the member's responsibility to review this handbook carefully and to be aware of the Plan's limitations and exclusions.

### SECTION 3. DEFINITIONS

The following are definitions of some important terms used in this handbook.

**Affidavit of Domestic Partnership** means a signed document that attests the subscriber and one other eligible person meet the criteria in the definition of unregistered domestic partner.

**Alveoloplasty** is the surgical shaping of the bone of the upper or the lower jaw. It is performed most commonly in conjunction with the removal of a tooth or multiple teeth to have the gums heal smoothly for the placement of partial denture or denture.

**Amalgam** is a silver-colored material used in restoring teeth.

**Anterior** refers to teeth located at the front of the mouth. (tooth chart in Section 18)

**Benefits** means those covered services that are available under the terms of the Plan.

**Bicuspid** is a premolar tooth, between the front and back teeth. (tooth chart in Section 18)

**Bridge** is also called a fixed partial denture. A bridge replaces one or more missing teeth using a pontic (false tooth or teeth) permanently attached to the adjacent teeth. Retainer crowns (crowns placed on adjacent teeth) are considered part of the bridge.

**Broken** A tooth is considered broken when a piece or pieces of the tooth have been completely separated from the rest of the tooth. A tooth with cracks is not considered broken.

**Cast Restoration** includes crowns, inlays, onlays, and any other restoration to fit a specific member's tooth that is made at a laboratory or dental office and cemented into the tooth.

**Coinsurance** means the percentages of covered expenses to be paid by a member.

**Composite** is a tooth-colored material used in restoring teeth.

**Cost Sharing** is the share of costs a member must pay when receiving a covered service, including deductible, copayments or coinsurance. Cost sharing does not include premiums, balance billing amounts for out-of-network providers or the cost of non-covered services.

**Debridement** is the removal of excess plaque. A periodontal 'pre-cleaning' procedure done when there is too much plaque for the dentist to perform an exam.

**Deductible** is the amount of covered expenses that are paid by a member before benefits are payable by the Plan.

**Dentally Necessary** means services that:

- a. are established as necessary for the treatment or prevention of a dental injury or disease otherwise covered under the Plan
- b. are appropriate with regard to standards of good dental practice in the service area;
- c. have a good prognosis

- d. are the least costly of the alternative supplies or levels of service that can be safely provided. For example, coverage would not be allowed for a crown when a filling would be adequate to restore the tooth appropriately

**The fact that a dentist may recommend or approve a service or supply does not, of itself, make the charge a covered expense.**

**Dentist** means a licensed dentist, to the extent that he or she is operating within the scope of his or her license as required under law within the state of practice.

**Denture Repair** is a procedure done to fix a complete, immediate, or partial denture. This includes adding a tooth to a partial denture, replacing a broken tooth in a denture, or fixing broken framework and/or base.

**Dependent** means any person who is or may become eligible for coverage under the terms of the Plan because of a relationship to a subscriber.

**Domestic Partner** refers to a registered domestic partner and an unregistered domestic partner as follows:

- a. **Registered Domestic Partner** means a person joined with the subscriber in a domestic partnership that has been registered under the laws of any federal, state or local government
- b. **Unregistered Domestic Partner** means a person who has entered into a partnership with the subscriber that meets the following criteria:

The domestic partner and subscriber

- i. are at least 18 years of age
- ii. share a close personal relationship and are responsible for each other's welfare
- iii. are each other's sole domestic partner
- iv. is not married to any person and does not have another domestic partner
- v. were mentally competent to contract when their domestic partnership began
- vi. are not related by blood closer than would bar marriage in the state of Oregon
- vii. are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested

**Eligible Employee** means any employee or former employee who has met the eligibility requirements to be enrolled under the Plan.

The **Group** is Clackamas County, the organization that has contracted with ODS to provide claims and other administrative services. It also means the Plan Sponsor.

**Group Health Plan** means any plan, fund or program established and maintained by the Group for the purpose of providing healthcare for its employees or their dependents through insurance, reimbursement or otherwise. This dental benefit plan is a group health plan.

**Implant** is an artificial, permanent tooth root replacement used to replace a missing tooth or teeth. It is surgically placed into the upper or lower jaw bone and supports a single crown, fixed bridge, or partial or full denture.

**Implant Abutment** is an attachment used to connect an implant and an implant supported prosthetic device.

**Implant Supported Prosthetic** is a crown, bridge, or removable partial or full denture that is supported by or attached to an implant.

**Maximum Plan Allowance (MPA)** is the maximum amount that the Plan will reimburse providers. For a participating Delta Dental Premier dentist, the maximum amount is the dentist's filed or contracted fee with ODS/Delta Dental. If the database does not contain a fee for a particular procedure in a particular area, the claim is referred to ODS' Dental Consultant who determines a comparable code to the one billed. For non-participating dentists or dental care providers, the maximum amount is based on a per service average allowance of the participating Delta Dental Premier dentists' filed fees. *The non-participating dentist or dental care provider has the right to bill the difference between ODS' maximum plan allowance and the actual charge. This difference will be the member's responsibility.* When using a non-participating dentist, any amount above MPA is the member's responsibility.

**Member** means a subscriber, dependent of a subscriber or a person otherwise eligible for the Plan who has enrolled for coverage under the terms of the Plan.

**Non-participating Dentist or Dental Provider** means a licensed dental provider who has not agreed to the terms and conditions established by ODS that participating Delta Dental Premier dentists have agreed to.

**ODS** refers to Oregon Dental Service, a not-for-profit dental healthcare service contractor. ODS is the claims administrator of the Plan. References to ODS as paying claims or issuing benefits mean that ODS processes a claim and the Group reimburses ODS for any benefit issued.

**Participating Delta Dental Premier Dentist** means a licensed dentist who has agreed to render services in accordance with terms and conditions established by ODS and has satisfied ODS that he or she is in compliance with such terms and conditions.

**Periodic Exam** is a routine exam (check-up), commonly performed every 6 months.

**Periodontal Maintenance** is a periodontal procedure for members who have previously been treated for periodontal disease. In addition to cleaning the visible surfaces of the teeth (as in prophylaxis) surfaces below the gum-line are also cleaned. This is a more comprehensive service than a regular cleaning (prophylaxis).

The **Plan** is the dental benefit plan sponsored and funded by the Group.

**Plan Sponsor** means the Group.

**Pontic** is an artificial tooth that replaces a missing tooth and is part of a bridge.

**Posterior** refers to teeth located toward the back of the mouth. (tooth chart in Section 18)

**Prophylaxis** is cleaning and polishing of all teeth.

**Reline** means the process of resurfacing the tissue side of a denture with new base material.

**Restoration** is the treatment that repairs a broken or decayed tooth. Restorations include, but are not limited to, fillings and crowns.

**Retainer** is a tooth used to support a prosthetic device (bridges, partial dentures or overdentures). Also see "**Implant Abutment.**"

**Subscriber** means any employee or former employee who is enrolled in the Plan.

**Veneer** is a layer of tooth-colored material attached to the surface of an anterior tooth to repair chips or cracks, fix gaps and change the shape and size of teeth. A **chairside veneer** is a restoration created in the dentist's office. A **laboratory veneer** is a restoration that is created (cast) at a laboratory. Chairside and laboratory veneers may be paid at different benefit levels.

**Waiting Period** means the period that must pass before a person is eligible to enroll for benefits under the terms of the Plan.

## **SECTION 4. EMPLOYEE GROUPS AND BENEFIT INFORMATION**

The following is a list of Employee Groups, their benefit structure, and annual maximums. Members having questions concerning which group or category they are in, should contact the County's Risk and Benefits Division or call ODS' Dental Customer Service Department.

### **Non-Represented**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **Employees' Association**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **Housing Authority Employees' Association**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **AFSCME - DTD**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **AFSCME WES**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **FOPPO**

- Incentive Plan
- \$2,000 annual maximum
- Adult and child Orthodontic benefit - \$2,000 lifetime maximum.

### **AFSCME - CCOM**

- Incentive Plan
- \$2000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **Represented Employees**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

### **Peace Officers Association**

- Incentive Plan
- \$1,500 annual maximum
- Child only Orthodontic benefit - \$3,000 lifetime maximum.

**Vector Control**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

**Fair Board**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

**Job Share Employees (Option I)**

- Incentive Plan
- \$2,000 annual maximum
- Child only Orthodontic benefit - \$2,000 lifetime maximum.

**All Employee Groups, with the exception of the Peace Officers Association, have the choice between the Incentive Plan with the benefits shown above and the Preventive or Constant Plan with the benefits shown below. A subscriber can change enrollment selection only during Open Enrollment or as a result of a qualified Family Status Change, see section 13.4.**

- Preventive Plan (100-80-70 percent coverage)
- \$2,000 annual maximum
- Adult and child Orthodontic benefit - \$3,000 lifetime maximum.
  
- Constant Plan (50% coverage)
- \$2,000 annual maximum
- No Orthodontic benefit available.

## SECTION 5. INCENTIVE PLAN

### 5.1 CLASS I, II AND III SERVICES

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- 5.1.1 The program provides 70% toward covered Class I, II and III services the first year a member is eligible.
- 5.1.2 Payment increases by 10% each successive year. To qualify for this 10% increase, the member must visit the dentist at least once during the year. Failure to do so will cause a 10% reduction in payment for the next year, although payment never drops below 70%.
- 5.1.3 Class I, II and III services will be covered at 100% at the end of three years, assuming at least one visit to the dentist each of these years.

### 5.2 CLASS IV SERVICES

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- 5.2.1 The program provides 50% toward covered Class IV services. There is no "10% increase" provision.

**Maximum Payment** The maximum amount payable by the Plan for covered services received each year, or portion thereof, for each eligible employee and dependent(s). Please see the Section 4 titled "Employee Groups and Benefit Information" for the annual maximum for your group.

## **SECTION 6. PREVENTIVE PLAN**

**6.1 CLASS I: 100% IS PROVIDED TOWARD COVERED CLASS I SERVICES.**

**6.2 CLASS II & III: 80% IS PROVIDED TOWARD COVERED CLASS II & III SERVICES.**

**6.3 CLASS IV: 70% IS PROVIDED TOWARD COVERED CLASS IV SERVICES.**

**6.4 DEDUCTIBLE: \$50**

**Per member (not to exceed \$100 per family) per year, or portion thereof.**

Deductible applies to covered Class II, Class III and Class IV services.

**Maximum Payment** The maximum amount payable by the Plan for covered services received each year, or portion thereof, for each eligible employee and dependent(s). Please see the Section 4 titled "Employee Groups and Benefit Information" for the annual maximum for your group.

## SECTION 7. CONSTANT PLAN

### 7.1 CLASS I, II, III AND IV SERVICES

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7.1.1 The program provides 50% payment toward covered Class I, II, III and IV services.

**Maximum Payment** The maximum amount payable by the Plan for covered services received each year, or portion thereof, for each eligible employee and dependent(s). Please see the Section 4 titled "Employee Groups and Benefit Information" for the annual maximum for your group.

## **SECTION 8. BENEFITS AND LIMITATIONS**

The Plan covers the services listed when performed by a dentist or dental care provider, denturist, or registered hygienist, and only when determined to be necessary and customary by the standards of generally accepted dental practice for the prevention or treatment of oral disease or for accidental injury (accidental injury coverage is secondary to medical). ODS' dental consultants and dental director shall determine these standards.

Payment of covered expenses is always limited to the maximum plan allowance. In no case will benefits be paid for services provided beyond the scope of a dentist's or dental care provider's license, certificate or registration. Services covered under the medical portion of a member's plan will not be covered on this Plan except when related to an accident.

Benefits are determined based on a calendar year (January 1 through December 31) or portion thereof.

Covered dental services are outlined in 4 "classes" that start with preventive care and advance into specialized dental procedures.

**Limitations may apply to these services, and are noted below. See Section 11 for exclusions.**

### **8.1 COVERED CLASS I SERVICES**

#### **8.1.1 Diagnostic**

**a. Diagnostic Services:**

- i. Examination
- ii. Intra-oral x-rays to assist in determining required dental treatment.

**b. Diagnostic Limitations:**

- i. Periodic (routine) or comprehensive examinations or consultations are covered twice per year.
- ii. Complete series x-rays or a panoramic film is covered once in any 3-year period\*.
- iii. Supplementary bitewing x-rays are covered twice per year.
- iv. Separate charges for review of a proposed treatment plan or for diagnostic aids such as study models and certain lab tests are not covered.
- v. Only the following x-rays are covered by the Plan: complete series or panoramic, periapical, occlusal, and bitewing.

#### **8.1.2 Preventive**

**a. Preventive Services:**

- i. Prophylaxis (cleanings)
- ii. Periodontal maintenance
- iii. Topical application of fluoride
- iv. Space maintainers
- v. Sealants

**b. Preventive Limitations:**

- i. Prophylaxis (cleaning) or periodontal maintenance is covered twice per year†.
- ii. Topical application of fluoride is covered twice per year for members age 18 and under. For members age 19 and over, topical application of fluoride is covered twice per calendar year if there is recent history of periodontal surgery or high risk of decay due to medical disease or chemotherapy or similar type of treatment (poor diet or oral hygiene does not constitute a medical disease).
- iii. Sealant benefits are limited to the unrestored, occlusal surfaces of permanent bicuspids and molars. Benefits will be limited to one sealant per tooth during any 5-year period.

\*These time periods are calculated from the previous date of service.

†Additional cleaning benefit is available for members with diabetes and members in their third trimester of pregnancy. To be eligible for this additional benefit, members must be enrolled in the Oral Health, Total Health program (see Section 9).

## **8.2 COVERED CLASS II SERVICES**

### **8.2.1 Restorative**

**a. Restorative Services:**

- i. Provides amalgam fillings and composite fillings for the treatment of carious lesions (decay).

**b. Restorative Limitations:**

- i. Inlays are considered an optional service; an alternate benefit of an amalgam filling will be provided.
- ii. Crown buildups are considered to be included in the crown restoration cost. A buildup will be a benefit only if necessary for tooth retention.
- iii. Additional limitations when teeth are restored with crowns or cast restorations are in section 8.3.1.
- iv. A separate charge for general anesthesia and/or IV sedation when in conjunction with non-surgical procedures is not covered, except as provided under Class II, Miscellaneous (oral sedatives and nitrous oxide).

### **8.2.2 Oral Surgery**

**a. Oral Surgery Services:**

- i. Extractions (including surgical),
- ii. Other minor surgical procedures.

**b. Oral Surgery Limitations:**

- i. A separate, additional charge for alveoplasty done in conjunction with surgical removal of teeth is not covered.
- ii. Surgery on larger lesions or malignant lesions is not considered minor surgery.
- iii. Brush biopsy is covered twice per year. Benefits are limited to the sample collection and does not include coverage for pathology (lab) services.

### **8.2.3 Endodontic**

- a. **Endodontic Services:**
  - i. Procedures for treatment of teeth with diseased or damaged nerves (for example, pulpal therapy and root canal filling).
- b. **Endodontic Limitations:**
  - i. A separate charge for cultures is not covered.
  - ii. Pulp capping is covered only when there is exposure of the pulp.
  - iii. Cost of retreatment of the same tooth by the same dentist within 24 months of a root canal is not eligible for additional coverage. The retreatment is included in the charge for the original care.

#### 8.2.4 Periodontic

- a. **Periodontic Services:**
  - i. Treatment of diseases of the gums and supporting structures of the teeth and/or implants.
- b. **Periodontic Limitations:**
  - i. Periodontal scaling and root planing are limited to once every 6 months. Periodontal cleaning up to 4 times per year when there is a diagnosis of periodontal disease.
  - ii. A separate charge for post-operative care done within 6 months following periodontal surgery is not covered.
  - iii. Full mouth debridement is limited to once in a 3-year period and only if there has been no cleaning (prophylaxis, periodontal maintenance) within 24 months.

#### 8.2.5 Miscellaneous

- a. **Miscellaneous Services:**
  - i. Oral sedatives are available to eligible dependents through age 17.
  - ii. Nitrous oxide shall be a covered benefit for members age 18 and over.

These Miscellaneous Services benefits do not apply to the Peace Officers Association.

#### 8.2.6 Anesthesia

- a. **Anesthesia Services:**
  - i. General anesthesia or IV sedation in conjunction with covered surgical procedures performed in a dental office.
  - ii. General anesthesia or IV sedation when necessary due to concurrent medical conditions.

### 8.3 COVERED CLASS III SERVICES

#### 8.3.1 Restorative

- a. **Restorative Services:**

- i. Cast restorations, such as crowns\*, onlays or lab veneers, necessary to restore decayed or broken teeth to a state of functional acceptability.

**b. Restorative Limitations:**

- i. Cast restorations (including pontics) are covered once in a 5-year period on any tooth. See section 8.2.1 for limitations on buildups.
- ii. Crowns for patients under age 16 are not covered. However, crowns for patients under age 16 may be covered upon review for medical necessity.
- iii. Porcelain restorations are considered cosmetic dentistry if placed on the upper second or third molars or the lower first, second or third molars. Coverage is limited to gold without porcelain, and the member is responsible for paying the difference.
- iv. If a tooth can be restored by an amalgam or composite filling, but another type of restoration is selected by the member or dentist, covered expense will be limited to a composite. Crowns are only a benefit if the tooth cannot be restored by a routine filling.

\* **Note:** Crowns are covered at 70% under the Preventive Plan.

## 8.4 COVERED CLASS IV SERVICES

### 8.4.1 Prosthodontic

**a. Prosthodontic Services:**

- i. Bridges
- ii. Partial and complete dentures
- iii. Denture relines
- iv. Repair of an existing prosthetic device
- v. Implants

**b. Prosthodontic Limitations:**

- i. A bridge or a full or partial denture will be covered once in a 5-year period and only if the tooth, tooth site, or teeth involved have not received a cast restoration benefit in the last 5 years.
- ii. Full, immediate and overdentures: If personalized or specialized techniques are used, the covered amount will be limited to the cost for a standard full denture. Temporary (interim or provisional) complete dentures are not covered.
- iii. Partial dentures: A temporary (interim) partial denture is only a benefit when placed within 2 months of the extraction of an anterior tooth or for missing anterior permanent teeth of members age 16 or under. If a specialized or precision device is used, covered expense will be limited to the cost of a standard cast partial denture. No payment is provided for cast restorations for *partial denture retainer teeth* unless the tooth requires a cast restoration due to being decayed or broken.
- iv. Denture adjustments, repairs, and relines: A separate, additional charge for denture adjustments, repairs, and relines done within 6 months after the initial placement is not covered. Subsequent relines will be covered once per denture in a 12-month period. Subsequent adjustments are limited to 2 adjustments per denture in a 12-month period.

- v. Tissue conditioning is covered no more than twice per denture in a 36-month period.
- vi. Surgical placement and removal of implants are covered. Implant placement and implant removal are limited to once per lifetime per tooth space. The Plan will also cover:
  - A. The final crown and implant abutment over a single implant. This benefit is limited to once per tooth or tooth space in any 5-year period; or
  - B. Provide an alternate benefit per arch of a full or partial denture for the final implant-supported full or partial denture prosthetic device when the implant is placed to support a prosthetic device. The frequency limitation for prosthetic devices will apply to this alternate benefit (once in any 5-year period); or
  - C. The final implant-supported bridge retainer and implant abutment, or pontic. The benefit is limited to once per tooth or tooth space in any 5-year period.
  - D. Implant-supported bridges are not covered if one or more of the retainers is supported by a natural tooth.
  - E. These benefits or alternate benefits are not provided if the tooth, implant, or tooth space received a cast restoration or prosthodontic benefit, including a pontic, within the previous 5 years.
- vii. Fixed bridges or removable cast partial dentures are not covered for members under age 16.
- viii. Porcelain restorations are considered cosmetic if placed on the upper second or third molars or the lower first, second, or third molars. Coverage is limited to a corresponding metallic prosthetic. The member is responsible for paying the difference.

### **8.5 GENERAL LIMITATION -- OPTIONAL SERVICES**

If a more expensive treatment than is functionally adequate is performed, the Plan will pay the applicable percentage of the maximum plan allowance for the least costly treatment. The member will be responsible for the remainder of the dentist's fee.

### **8.6 NON-PARTICIPATING DENTISTS**

The amounts payable for services of a non-participating dentist or dental care provider are limited to the applicable percentages specified in the Plan for corresponding services in the non-participating dentist fee schedule. The allowable fee in states other than Oregon shall be that state's Delta Affiliate's non-participating dentist allowance.

## **SECTION 9. ORAL HEALTH, TOTAL HEALTH PROGRAM**

Visiting a dentist on a regular basis and keeping the mouth healthy is critical to keeping the rest of the body healthy.

Studies have indicated a relationship between periodontal disease, bacteria in the mouth, and various health problems including pre-term, low birth weight babies and diabetes.

### **9.1 ORAL HEALTH, TOTAL HEALTH BENEFITS**

The Plan offers a program that provides additional cleanings (prophylaxis or periodontal maintenance) for members based on this evidence. This benefit is for the cleaning only. Coverage for a routine exam and other services is subject to the frequency limitations outlined in Section 8.

#### **9.1.1 Diabetes**

For members with diabetes, elevated blood sugar levels can have a negative effect on oral health. Diabetes increases the risk of cavities, gum disease, tooth loss, dry mouth and infection. Conversely, poor oral health can make diabetes more difficult to manage. Infections may cause blood sugar to rise and require more insulin to keep it under control. Research confirms that regular visits to the dentist may help in the diagnosis and management of diabetes.

Diabetic members are eligible for a total of 4 cleanings per year.

#### **9.1.2 Pregnancy**

Keeping the mouth healthy during a pregnancy is important for a member and the baby. According to the American Dental Association, pregnant women who have periodontal (gum) disease are more likely to have a baby that is born too early and too small.

Research suggests that periodontal disease triggers increased levels of biological fluids that induce labor. Furthermore, data suggests that women whose periodontal condition worsens during pregnancy have an even higher risk of having a premature baby.

Dental visits during a woman's third trimester of pregnancy may help prevent pre-term, low birth weight babies.

Members should talk to their dentist about scheduling a routine cleaning or periodontal maintenance during the third trimester of pregnancy. Pregnant members are eligible for a cleaning in the third trimester of pregnancy regardless of normal plan frequency limits.

#### **9.1.3 How to Enroll**

Enrolling in the Oral Health, Total Health program is easy. To enroll, a member can contact ODS Customer Service or complete and return the Oral Health, Total Health enrollment form found on myModa. Members with diabetes must include proof of diagnosis.

## **SECTION 10. ORTHODONTIC BENEFIT**

### **10.1 ORTHODONTIC BENEFIT**

For adult and child coverage, the Plan covers orthodontic services for all enrolled members.

For child only coverage, the Plan covers orthodontic services for dependent children if treatment begins prior to the their 17<sup>th</sup> birthday.

Orthodontic services are defined as the procedures of treatment for correcting maloccluded teeth.

The Plan will pay 50% toward covered orthodontic services, up to the maximum benefit.

**If the Plan has a deductible, it does not apply to orthodontic services.**

**Lifetime Maximum Payment for Orthodontic Services** Please see Section 4 entitled "Employee Groups and Benefit Information" for the lifetime maximum for your group.

### **10.2 LIMITATIONS**

The Plan's obligation to make payments for treatment will end when treatment stops for any reason prior to completion, or upon termination of eligibility or of the Plan.

If treatment began before the member was eligible under the Plan, the Plan will base its obligation on the balance of the dentist's normal payment pattern. The orthodontic maximum will apply to this amount.

Repair or replacement of an appliance furnished under the Plan is not covered.

## **SECTION 11. EXCLUSIONS**

In addition to the limitations and exclusions described elsewhere in the Plan, the following services, procedures and conditions are not covered, even if otherwise dentally necessary, if they relate to a condition that is otherwise covered by the Plan, or if recommended, referred, or provided by a dentist or dental care provider.

### **Anesthesia or Sedation**

General anesthesia and/or IV sedation except as stated in section 8.2.6.

### **Anesthetics, Analgesics, Hypnosis, and Medications**

Hypnosis, prescribed drugs, premedications, analgesics are excluded (except oral sedatives for eligible dependents through age 17 and nitrous oxide for members ages 18 and over). (However, oral sedatives and nitrous oxide are exclusions for the Peace Officers Association.)

### **Benefits Not Stated**

Services or supplies not specifically described in this handbook as covered dental services.

### **Claims Not Submitted Timely**

Claims submitted more than 12 months after the date of service, except as stated in section 14.1.

### **Congenital or Developmental Malformations**

Including treatment of cleft palate, maxillary and/or mandibular (upper and lower jaw) malformations, enamel hypoplasia, and fluorosis (discoloration of teeth). Except orthodontia for treatment of cleft palate may be covered.

### **Cosmetic Services**

### **Experimental or Investigational Procedures**

Including expenses incidental to or incurred as a direct consequence of such procedures.

### **Facility Fees**

Including additional fees charged by the dentist for hospital, extended care facility or home care treatment.

### **Gnathologic Recordings**

### **Illegal Acts, Riot or Rebellion**

Services and supplies for treatment of an injury or condition caused by or arising out of a member's voluntary participation in a riot, armed invasion or aggression, insurrection, or rebellion or arising directly from an illegal act.

### **Instructions or Training**

Including plaque control and oral hygiene or dietary instruction.

### **Localized Delivery of Antimicrobial Agents**

### **Missed Appointment Charge**

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## **EXCLUSIONS**

ODSDent-ASO 1-1-2014-a (10000174)

**Never Events**

Services and supplies related to never events, which are events that should never happen while receiving services in a dental office, including removing a non-diseased tooth structure or performing a procedure on the wrong patient or wrong tooth.

**Periodontal Charting****Precision Attachments****Rebuilding or Maintaining Chewing Surface; Stabilizing Teeth**

Including services only to prevent wear or protect worn or cracked teeth. Such services include increasing vertical dimension, equilibration, periodontal splinting, and nightguards (occlusal guard).

**Services on Tongue, Lip, or Cheek****Services Otherwise Available**

Including:

- a. Those compensable under workers' compensation or employer's liability laws
- b. Those provided by any city, county, state or federal law, except for Medicaid coverage
- c. Those provided without cost to the member by any municipality, county or other political subdivision or community agency, except to the extent that such payments are insufficient to pay for the applicable covered dental services provided under the Plan
- d. Any condition, disease, ailment, injury or diagnostic service to the extent that benefits are provided or would have been provided had the member enrolled, applied or maintained eligibility for such benefits under Title XVIII of the Social Security Act, as amended
- e. Those provided under separate contracts that are used to provide coordinated coverage for covered persons in a group and are considered parts of the same plan

**Services Provided by a Relative**

Relatives, for the purpose of this exclusion, include a member or a spouse, domestic partner, child, sibling, or parent of a member or his or her spouse or domestic partner.

**Taxes****Third Party Liability Claims**

Services and supplies for treatment of illness or injury for which a third party is or may be responsible, to the extent of any recovery received from or on behalf of the third party. Includes benefits payable under any automobile medical, personal injury protection (PIP), automobile no fault, underinsured or uninsured, homeowner, commercial premises coverage, or similar contract or insurance, when such contract or insurance is issued to or makes benefits available to a member, whether or not such benefits are requested. (See section 14.3.2).

**TMJ**

Treatment of any disturbance of the temporomandibular joint (TMJ).

**Treatment After Coverage Terminates**

Except for Class III services that were ordered and fitted while still eligible, and then only if such items are cemented within 31 days after a member's eligibility ends. This provision is not applicable if the Group transfers its plan to another carrier.

**Treatment Before Coverage Begins**

**Treatment Not Dentally Necessary**

Including services:

- a. not established as necessary for the treatment or prevention of a dental injury or disease otherwise covered under the Plan
- b. that are inappropriate with regard to standards of good dental practice
- c. with poor prognosis

## **SECTION 12. ELIGIBILITY**

The date a person becomes eligible may be different than the date coverage begins (see section 13.5).

### **12.1 SUBSCRIBER**

A person is eligible to enroll in the Plan if he or she:

- a. is a regular full-time or part-time employee, an employee in a job share position, a non-represented job share employee with benefit dollar allowance, or a retiree of Clackamas County
- b. is not a seasonal, substitute, or temporary employee, or an agent, consultant, or independent contractor or leased worker
- c. is paid on a regular basis through the payroll system, has federal taxes deducted from such pay, and is reported to Social Security
- d. works for the Group on a regularly scheduled basis working the minimum number of hours per week required for that job position
- e. has satisfied any eligibility waiting period

Spouses or domestic partners who are both eligible employees may each enroll as a subscriber or one may be covered as an enrolled dependent of the other.

Subscribers are eligible to remain enrolled if they are on an approved leave of absence under state or federal family and medical leave laws. Members should check with the Group's benefits manager to find out whether they qualify for this provision.

### **12.2 DEPENDENTS**

A subscriber's legal spouse or domestic partner is eligible for coverage. A subscriber's children are eligible until their 26th birthday. Children eligible due to a court or administrative order are also subject to the Plan's child age limit.

For purposes of determining eligibility, the following are considered "children":

- a. The natural, adopted or foster child of a subscriber or a subscriber's spouse or domestic partner
- b. Children placed for adoption with a subscriber. Adoption paperwork must be provided
- c. A newborn child of an enrolled dependent for the first 31 days of the newborn's life
- d. Children related to a subscriber by blood or marriage for whom the subscriber is the legal guardian. A court order showing legal guardianship must be provided

If a subscriber has a child who has sustained a disability rendering him or her physically or mentally incapable of self-support, that child may be eligible for coverage even though he or she is over 26 years old. For the purposes of this handbook, mental incapacity means intellectual competence usually characterized by an IQ of less than 70, and physical incapacity means the inability to pursue an occupation or education because of a physical impairment. To

be eligible, the child must be unmarried and principally dependent on the subscriber for support. The incapacity must have arisen before the child's 26th birthday and the child must have had continuous dental coverage. The subscriber must provide ODS with a written physician's statement that confirms that these conditions existed continuously prior to the child's 26th birthday. Documentation of the child's medical condition must be reviewed and approved by ODS' medical consultant. Periodic review by the medical consultant will also be required on an ongoing basis except in cases where the disability is certified to be permanent.

### **12.3 QUALIFIED MEDICAL CHILD SUPPORT ORDER (QMCSO)**

The Plan will cover persons deemed to be alternative recipients under a qualified medical child support order (QMCSO). A QMCSO is a court judgment, decree, or order, or a state administrative order that has the force and effect of law, that is typically issued as part of a divorce or as part of a state child support order proceeding, and that requires health plan coverage for an alternative recipient. An alternative recipient is a child of an eligible employee who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such eligible employee.

The child's coverage under the Plan will be effective as of the first day of the month following the date that the Group determines that the applicable order qualifies as a QMCSO and that the child is eligible for enrollment in the Plan.

The Plan has detailed procedures for determining whether an order qualifies as a QMCSO. A copy of such procedures is available from the Group without charge.

### **12.4 NEW DEPENDENTS**

If a subscriber marries or registers a domestic partnership, the spouse or domestic partner and his or her children are eligible to enroll as of the date of the marriage or registration.

If a subscriber files an Affidavit of Domestic Partnership with the Group, the unregistered domestic partner and his or her children are eligible for coverage.

A member's newborn child will automatically be enrolled for 31 days after birth. Adopted children are automatically enrolled for the first 31 days from the date of the adoption decree. If a child is placed with the subscriber pending the completion of adoption proceedings, that child will be enrolled for the first 31 days from the date of placement. To obtain coverage, an online enrollment application with the group must be submitted within those 31 days. If the enrollment application is not received, the child will not be covered. Proof of legal guardianship will be required for coverage of a grandchild beyond the first 31 days from birth.

Placement for adoption means a subscriber has assumed and retained a legal obligation for full or partial support of the child in anticipation of adoption.

A new dependent may cause a premium increase. Premiums will be adjusted accordingly and will apply during the first 31 days of coverage for newborn or adopted children.

## **SECTION 13. ENROLLMENT**

### **13.1 ENROLLING ELIGIBLE EMPLOYEES**

Application for coverage may be submitted online for the eligible employee and any dependents to be enrolled and must be filed with the Group within 15 days of becoming eligible to apply for coverage. Eligible employees can apply on the date of hire or the end of any required waiting period.

The subscriber must notify the Group of any change of address.

### **13.2 ENROLLING NEW DEPENDENTS**

To enroll a new dependent, just complete the online enrollment application with the Group within 60 days of their eligibility.

The subscriber must notify ODS through the Group if family members are added or dropped from coverage, even if it does not affect premiums.

### **13.3 OPEN ENROLLMENT**

Eligible employees and/or any eligible dependents who are not enrolled within 15 days of first becoming eligible must wait for the next open enrollment period to enroll unless they meet one of the eligibility requirements described in section 13.4. Open enrollment occurs once a year at renewal.

### **13.4 SPECIAL ENROLLMENT RIGHTS**

#### **13.4.1 Loss of Other Coverage**

If coverage is declined when initially eligible because of other dental coverage, an eligible employee or any dependent(s) may enroll in the Plan outside of the open enrollment period, but only if the following criteria are met:

- a. The eligible employee or dependent was covered under a group dental plan or had dental coverage at the time coverage was previously offered;
- b. The eligible employee stated in writing at such time that coverage under a group dental plan or dental coverage was the reason enrollment was declined;
- c. The eligible employee requests such enrollment not later than 60 days after the previous coverage ended; and
- d. One of the following events has occurred:
  - i. The eligible employee's or dependent's prior coverage was under a COBRA continuation provision and the coverage under such provision was exhausted; this includes reaching the lifetime maximum while on COBRA coverage.

- ii. The eligible employee's or dependent's prior coverage was terminated as a result of loss of eligibility for the coverage. Examples of when coverage under a plan may be lost include:
  - A. legal separation or divorce
  - B. loss of dependent status per plan terms
  - C. death
  - D. termination of employment
  - E. reduction in the number of hours of employment
  - F. the plan ceasing to offer coverage to a group of similarly situated persons
  - G. moving out of an HMO service area that results in termination of coverage and no other option is available under the plan
  - H. termination of the benefit package option, and no substitute option is offered
- iii. The employer contributions toward the eligible employee's or dependent's other coverage were terminated. (If employer contributions cease, the eligible employee or dependent does not have to terminate coverage under the prior plan in order to be eligible for special enrollment.)
- iv. The eligible employee's or dependent's prior coverage was under Medicaid or a children's health insurance program (CHIP) and such coverage was terminated due to loss of eligibility. Special enrollment must be requested within 60 days of the termination.

#### **13.4.2 Eligibility for Premium Subsidy**

If an eligible employee or dependent covered under Medicaid or CHIP becomes eligible for a premium assistance subsidy, and special enrollment is requested within 60 days of the determination of eligibility, they may enroll in the Plan outside of the open enrollment period.

The special enrollment rights as described in sections 13.4.1 and 13.4.2 apply:

- a. To an eligible employee who loses other coverage or becomes eligible for a premium assistance subsidy
- b. To a subscriber's dependent who loses other coverage or becomes eligible for a premium assistance subsidy
- c. To both an eligible employee and his or her dependent if neither is enrolled under the Plan, and either loses other coverage or becomes eligible for a premium assistance subsidy

To enroll, an eligible employee will need to submit an online enrollment application within the required timeframe.

#### **13.4.3 Family Status Changes**

Benefits are regulated by Section 125 of the Internal Revenue Code (IRC). This allows an eligible employee to change enrollment selections only during Open Enrollment and/or as a result of a qualified Family Status Change.

- a. All enrollment changes must be completed through the Risk & Benefits Division
- b. To make changes, the eligible employee must complete a Notice of Change in Family Status and required enrollment forms, and provide the required documentation within

60 days of the qualifying event. If the 60-day deadline is not met, the eligible employee will not be able to add any family members until the next Open Enrollment

- c. Changes are effective the first of the month following the Family Status Change or receipt of required forms and documents, whichever is later. Dental coverage for new children is automatic only for the first 31 days from the date of birth or adoption. Claims received after the 31st day will not be paid until enrollment forms are completed and processed

### **13.5 WHEN COVERAGE BEGINS**

Coverage will begin on the first day of the month following two months of continuous employment.

Coverage for new dependents through marriage, registration of a domestic partnership, or the filing of an Affidavit of Domestic Partnership with the Group will begin on the first day of the month following receipt of the online enrollment forms.

Coverage for a newborn is effective on the date of the newborn's birth. Coverage for a child newly adopted or placed for adoption is effective on the date of adoption or placement. Court ordered coverage is effective on the first day of the month following the date the Group determines that an applicable order qualifies as a QMCSO, and that the child is eligible for enrollment in the Plan.

The necessary premiums must also be paid for coverage to become effective.

Coverage for those enrolling during open enrollment begins on the date the Plan renews. All other plan provisions will apply. Coverage under special enrollment due to loss of coverage or eligibility for premium subsidy begins on the first day of the month following receipt of the special enrollment request.

### **13.6 WHEN COVERAGE ENDS**

The circumstances in which a member's coverage will end are described in the following sections. When the subscriber's coverage ends, coverage for all enrolled dependents also ends.

#### **13.6.1 Termination of the Group Plan**

If the Plan is terminated for any reason, coverage ends for the members on the date the Plan ends.

#### **13.6.2 Termination by a Subscriber**

A subscriber may terminate his or her coverage, or coverage for any enrolled dependent, by giving written notice to the Group. Coverage will end on the last day of the month through which premiums are paid.

#### **13.6.3 Death**

If a subscriber dies, coverage for any enrolled dependents ends on the last day of the month in which the death occurs. Enrolled dependents may extend their coverage for up to 3 years if the requirements for continuation of coverage are met (see section 17.2). The Group must notify

ODS of any continuation of coverage and appropriate premiums must be paid along with the Group's regular monthly payment.

#### **13.6.4 Loss of Eligibility, Layoff or Reduction in Hours of Employment**

If employment terminates, coverage will end on the last day of the month in which termination occurs, unless a member chooses to continue coverage (see Section 17).

If a subscriber is laid-off by the Group and returns to active work within 6 months of being laid off, he or she and any eligible dependents may enroll in the Plan on the date of rehire and coverage will begin on that date.

If a subscriber experiences a reduction in hours that causes loss of coverage, and within 6 months the hours increase and the subscriber again qualifies for benefits, he or she and any eligible dependents may enroll in the group plan on the date the subscriber qualifies and coverage will begin on that date provided the necessary premiums for coverage are paid.

The Group must notify ODS that the subscriber is rehired or of an increase in hours and the necessary premiums for coverage must be paid. All Plan provisions will resume at re-enrollment whether or not there was a lapse in coverage. Upon re-enrollment in the Plan, any waiting period required by the Plan will not have to be re-served.

An employee who has continuously participated in COBRA continuation coverage during a layoff, and is reinstated to employment within eighteen (18) months from layoff, will have the benefit waiting period waived. This applies to all lines of coverage and any type of layoff (economic or medical layoff).

#### **13.6.5 Loss of Eligibility by Dependent**

Coverage ends for an enrolled spouse on the last day of the month in which a decree of divorce or annulment is entered (regardless of any appeal), and for an enrolled domestic partner on the last day of the month in which a judgment of dissolution or annulment of the domestic partnership has been entered or the domestic partnership no longer meets the requirements of the Affidavit of Domestic Partnership filed with the Group..

Coverage ends for an enrolled child on the last day of the month in which the child reaches age 26, unless the child continues coverage as provided under the Plan (see Section 17).

All enrolled dependents have the right to continue coverage in their own names when their coverage under the Plan ends.

#### **13.6.6 Rescission by the Plan**

The Plan may rescind a member's coverage back to the effective date, or deny claims at any time for fraud, material misrepresentation, or concealment by a member, which may include but is not limited to enrolling ineligible persons on the Plan, falsifying or withholding documentation or information that is the basis for eligibility or employment, and falsification or alteration of claims. The Plan reserves the right to retain premiums paid as liquidated damages, and the member shall be responsible for the full balance of any benefits paid. Should the Plan terminate coverage under this section, ODS may, to the extent permitted by law, deny future enrollment of the members under any Oregon Dental Service policy or contract or the contract of any affiliates.

#### **13.6.7 Continuing Coverage**

## **SECTION 14. CLAIMS ADMINISTRATION & PAYMENT**

### **14.1 SUBMISSION AND PAYMENT OF CLAIMS**

#### **14.1.1 Claim Submission**

In no event, except absence of legal capacity or in the case of a Medicaid claim, is a claim valid if submitted later than 12 months from the date the expense was incurred. Claims submitted by Medicaid must be sent to ODS within 3 years after the date the expense was incurred.

#### **14.1.2 Explanation of Benefits (EOB)**

Soon after receiving a claim, ODS will report its action on the claim by providing the member a document called an Explanation of Benefits (EOB). Members are encouraged to access their EOBs electronically by signing up through myModa. The Explanation of Benefits will indicate if a claim has been paid, denied, or accumulated toward satisfying the deductible, if any. If all or part of a claim is denied, the reason will be stated in the EOB.

*If a member does not receive an EOB or an email indicating that an EOB is available within a few weeks of the date of service, this may indicate that ODS has not received the claim. To be eligible for reimbursement, claims must be received within the claim submission period explained in section 14.1.1.*

#### **14.1.3 Claim Inquiries**

ODS Customer Service can answer questions about how to file a claim, the status of a pending claim, or any action taken on a claim. ODS will respond to an inquiry within 30 days of receipt.

#### **14.1.4 Time Frames for Processing Claims**

If a claim is denied, ODS will send an EOB explaining the denial within 30 days after receiving the claim. If additional time is needed to process the claim for reasons beyond ODS' control, a notice of delay will be sent to the member explaining those reasons within 30 days after ODS receives the claim. ODS will then complete its processing and send an EOB to the member no more than 45 days after receiving the claim. If additional information is needed to complete processing of the claim, the notice of delay will describe the information needed, and the party responsible for providing the additional information will have 45 days to submit it. Once the additional information is received, processing of the claim will be completed within 15 days. Submission of information necessary to process a claim is subject to the Plan's claim submission period explained in section 14.1.1.

## **14.2 APPEALS**

### **14.2.1 Definitions**

For purposes of section 14.2, the following definitions apply:

**Adverse Benefit Determination** means a written notice from ODS, in the form of a letter or an Explanation of Benefits (EOB), of any of the following: a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for a benefit, including one based on a determination of a member's eligibility to participate in the Plan and one resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational

or not necessary and customary by the standards of generally accepted dental practice for the prevention or treatment of oral disease or accidental injury.

**Appeal** is a written request by a member or his or her representative for ODS to review an adverse benefit determination.

**Utilization Review** means a system of reviewing the dental necessity, appropriateness, or quality of dental care services and supplies using specific guidelines, including certification, the application of practice guidelines, and retrospective review. An adverse benefit determination that the item or service is not dentally necessary or appropriate, is investigational or experimental, or in which the decision as to whether a benefit is covered involved a dental judgment is a utilization review decision.

#### **14.2.2 Time Limit for Submitting Appeals**

Members have **180 days** from the date of an adverse benefit determination to submit an initial written appeal regarding that determination. If an initial written appeal is not submitted within the timeframes outlined in this section, the member will lose the right to the appeal process.

#### **14.2.3 The Review Process**

The Plan has a 2-level review process. The first level of review is called a first level appeal. The second level of review is a second level appeal. ODS' response time to an appeal is based on the nature of the claim as described below.

The timelines addressed in the sections below do not apply when the member does not reasonably cooperate, or circumstances beyond the control of either party prevents that party from complying with the standards set (but only if the party who is unable to comply gives notice of the specific circumstances to the other party when the circumstances arise).

#### **14.2.4 First Level Appeals**

Before filing an appeal, it may be possible to resolve a dispute with a phone call to ODS Customer Service. Otherwise, an appeal must be submitted in writing. If necessary, ODS Customer Service can provide assistance filing an appeal. Written comments, documents, records, and other information relating to the claim for benefits may be submitted. Upon request and free of charge, the member may have reasonable access to, and copies of, all documents, records, and other information relevant to the claim for benefits. ODS will acknowledge receipt of the written appeal within 7 days and conduct an investigation by persons who were not previously involved in the original determination. The investigation will be completed within 30 days of receipt of the appeal.

When an investigation has been completed, ODS will send a written notice of the decision to the member, including the basis for the decision. If applicable, the notice will include information on the right to a second level appeal.

#### **14.2.5 Second Level Appeal**

A member who disagrees with the decision regarding the first level appeal may request a review of the decision. A second level appeal must be submitted in writing within 60 days of the date of ODS' action on the first level appeal. Investigations and responses to a second level appeal will be by persons who were not involved in the initial determinations. The member will have the option to submit written comments, documents, records and other information related to the case that were not previously submitted.

Investigations and responses to a second level appeal will follow the same timelines outlined in section 14.2.4. ODS will notify the member in writing of the decision, including the basis for the decision.

### **14.3 BENEFITS AVAILABLE FROM OTHER SOURCES**

Sometimes dental expenses may be the responsibility of someone other than the Plan.

#### **14.3.1 Coordination of Benefits (COB)**

This provision applies when a member has healthcare coverage under more than one plan. A complete explanation of COB is in Section 15.

#### **14.3.2 Third-Party Liability**

A member may have a legal right to recover benefit or healthcare costs from a third party as a result of an illness or injury for which benefits or healthcare costs were paid by the Plan. For example, a member who is injured may be able to recover the benefits or healthcare costs from a person or entity responsible for the injury or from an insurer, including different forms of liability insurance, or uninsured motorist coverage or under-insured motorist coverage. As another example, a member may become sick or be injured in the course of employment, in which case the employer or a workers' compensation insurer may be responsible for healthcare expenses connected with the illness or injury. If the Plan makes an advance payment of benefits, as described below, it is entitled to be reimbursed for any benefits it paid that are associated with any illness or injury that are or may be recoverable from a third party or other source. Amounts received by the Plan through these recoveries help reduce the cost of premiums and providing benefits.

Payment of benefits where a third party may be legally liable is excluded under the terms of the Plan. Because recovery from a third party may be difficult and take a long time, as a service to the member the Plan will pay a member's expenses based on the understanding and agreement that the member is required to honor the Plan's subrogation rights (section 14.3.2.2) and, if requested, to reimburse the Plan in full from any recovery the member may receive, no matter how the recovery is characterized.

Upon claiming or accepting benefits, or the provision of benefits, under the terms of the Plan, the member agrees that the Plan has the remedies and rights described in section 14.3.2. The Plan may elect to seek recovery under one or more of the procedures outlined in this section. The member agrees to do whatever is necessary to fully secure and protect, and to do nothing to prejudice, the Plan's right of reimbursement or subrogation as discussed in this section. ODS has the sole discretion to interpret and construe these reimbursement and subrogation provisions.

##### **14.3.2.1 Definitions:**

For purposes of section 14.3.2, the following definitions apply:

**Benefits** means any amount paid by the Plan, or submitted to ODS for payment to or on behalf of a member. Bills, statements or invoices submitted to ODS by a provider of services, supplies or facilities to or on behalf of a member are considered requests for payment of benefits by the member.

**Recovery Funds** means any amount recovered from a third party.

**Third Party** means any person or entity responsible for the injury or illness, or the aggravation of an injury or illness, of a member. Third party includes any insurer of such individual or entity, including different forms of liability insurance, or any other form of insurance that may pay money to or on behalf of the member including uninsured motorist coverage, under-insured motorist coverage, premises med-pay coverage, personal injury protection (PIP) coverage, and workers' compensation insurance.

**Third Party Claim** means any claim, lawsuit, settlement, award, verdict, judgment, arbitration decision or other action against a third party (or any right to assert the foregoing) by or on behalf of a member, regardless of the characterization of the claims or damages of the member, and regardless of the characterization of the recovery funds. (For example, a member who has received payment of dental/medical expenses from the Plan may file a third party claim against the party responsible for the member's injuries, but only seek the recovery of non-economic damages. In that case, the Plan is still entitled to recover benefits as described in section 14.3.2.)

#### **14.3.2.2 Subrogation**

Upon payment by the Plan, the Plan shall be subrogated to all of the member's rights of recovery. The member shall do whatever is necessary to secure such rights and do nothing to prejudice them. The Plan may pursue the third party in its own name or in the name of the member. The Plan is entitled to all subrogation rights and remedies under the common and statutory law, as well as under the Plan.

#### **14.3.2.3 Right of Recovery**

In addition to its subrogation rights, the Plan may, at its sole discretion and option, ask that a member, and his or her attorney, if any, protect its reimbursement rights. The following rules apply to this right of recovery:

- a. The member holds any rights of recovery against the third party in trust for the Plan, but only for the amount of benefits the Plan paid for that illness or injury.
- b. The Plan is entitled to receive the amount of benefits it has paid for that illness or injury out of any settlement or judgment that results from exercising the right of recovery against the third party. This is so regardless of whether the third party admits liability or asserts that the member is also at fault. In addition, the Plan is entitled to receive the amount of benefits it has paid whether the healthcare expenses are itemized or expressly excluded in the third party recovery.
- c. If the Plan asks the member and his or her attorney to protect its reimbursement rights under this section, then the member may subtract from the money to be paid back to the Plan a proportionate share of reasonable attorney fees as an expense for collecting from the other party.
- d. ODS may ask the member to sign an agreement to abide by the terms of this section. The Plan will not be required to pay benefits for the illness or injury until the agreement is properly signed and returned.
- e. This right of recovery includes the full amount of the benefits paid or pending payment by the Plan out of any recovery made by the member from the third party, including without limitation any and all amounts from the first dollars paid or payable to the

member (including his or her legal representatives, estate or heirs, or any trust established for the purpose of paying for the future income, care or medical expenses of the member), regardless of the characterization of the recovery, whether or not the member is made whole, or whether or not any amounts are paid or payable directly by the third party, an insurer or another source. The Plan's recovery rights will not be reduced due to the member's own negligence.

- f. If it is reasonable to expect that the member will incur future expenses for which benefits might be paid by the Plan, the member shall seek recovery of such future expenses in any third party claim.

#### **14.3.2.4 Motor Vehicle Accidents**

Any expense for injury or illness that results from a motor vehicle accident and is payable under a motor vehicle insurance policy is not a covered benefit and will not be paid by the Plan.

If a claim for dental expenses arising out of a motor vehicle accident is filed with ODS, and if motor vehicle insurance has not yet paid, then the Plan may advance benefits, subject to sections 14.3.2.2 and 14.3.2.3. In addition, in third party claims involving the use or operation of a motor vehicle, the Plan, at its sole discretion and option, is entitled to seek reimbursement under the Personal Injury Protection statutes of the state of Oregon, including ORS 742.534, ORS 742.536, or ORS 742.538, or under applicable state law.

#### **14.3.2.5 Additional Third Party Liability Provisions**

In connection with the Plan's rights as discussed in the above sections, members shall do one or more of the following and agree that the Plan may do one or more of the following at its discretion:

- a. If a member seeks payment by the Plan of any benefits for which there may be a third party claim, the member shall notify ODS of the potential third party claim. The member has this responsibility even if the first request for payment of benefits is a bill or invoice submitted to ODS by the member's provider.
- b. Upon request from ODS, the member shall provide all information available to the member, or any representative or attorney representing the member, relating to the potential third party claim. The member and his or her representatives are obligated to notify ODS in advance of any claim (written or oral) and/or any lawsuit made against a third party seeking recovery of any damages from the third party, whether or not the member is seeking recovery of benefits paid by the Plan from the third party.
- c. A member seeking payment of benefits by ODS in accordance with section 14.3.2 must fill out, sign and return to ODS a Third Party Reimbursement Questionnaire and Agreement. If the member is a minor or legally incapable of contracting, then the member's parent or guardian must sign, and if the member has retained an attorney, then the attorney must also sign the agreement.
- d. The member shall cooperate with the Plan to protect its recovery rights, and in addition, but not by way of limitation, shall:
  - i. Sign and deliver any documents the Plan reasonably requires to protect its rights
  - ii. Provide any information to ODS relevant to the application of the provisions of section 14.3.2, including dental/medical information (doctors' reports, chart

- notes, diagnostic test results, etc.), settlement correspondence, copies of pleadings or demands, and settlement agreements, releases or judgments
- iii. Take such actions as ODS may reasonably request to assist the Plan in enforcing its third party recovery rights
  - e. By accepting payment of benefits by the Plan, the member agrees that the Plan has the right to intervene in any lawsuit or arbitration filed by or on behalf of a member seeking damages from a third party.
  - f. The member agrees that ODS may notify any third party, or third party's representatives or insurers, of the Plan's recovery rights described in section 14.3.2.
  - g. Even without the member's written authorization, ODS may release to, or obtain from, any other insurer, organization or person, any information it needs to carry out the provisions of section 14.3.2.
  - h. This section applies to any member for whom advance payment of benefits is made by the Plan whether or not the event giving rise to the member's injuries occurred before the member became covered.
  - i. If the member continues to receive dental/medical treatment for an illness or injury after obtaining a settlement or recovery from a third party, the Plan will provide benefits for the continuing treatment of that illness or injury only to the extent that the member can establish that any sums that may have been recovered from the third party have been exhausted.
  - j. If the member or the member's representatives fail to do any of the foregoing acts at ODS' request, then the Plan has the right to not advance payment of benefits or to suspend payment of any benefits for or on behalf of the member related to any sickness, illness, injury or dental/medical condition arising out of the event giving rise to, or the allegations in, the third party claim. In exercising this right, the Plan may notify dental/medical providers seeking authorization or prior authorization of payment of benefits that all payments have been suspended, and may not be paid.
  - k. Coordination of benefits (where the member has dental/medical coverage under more than one plan or health insurance policy) is not considered a third party claim.
  - l. If any term, provision, agreement or condition of section 14.3.2 is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

## SECTION 15. COORDINATION OF BENEFITS

Coordination of Benefits (COB) occurs when a member has dental coverage under more than one plan.

### 15.1 DEFINITIONS

For purposes of Section 15, the following definitions apply:

**Plan** means any of the following that provides benefits or services for dental care or treatment. If separate contracts are used to provide coordinated coverage for covered persons in a group, the separate contracts are considered parts of the same plan and there is no COB among those separate contracts.

Plan includes:

- a. Group insurance contracts and group-type contracts
- b. HMO (health maintenance organization) coverage
- c. Coverage under a labor-management trusteeship plan, a union welfare plan, an employer organization plan or an employee benefits plan
- d. Medicare or other government programs, other than Medicaid, and any other coverage required or provided by law
- e. Other arrangements of insured or self-insured group or group-type coverage

Plan does not include:

- a. Fixed indemnity coverage
- b. Accident-only coverage
- c. Specified disease or specified accident coverage
- d. School accident coverage
- e. Medicare supplement policies
- f. Medicaid policies
- g. Coverage under other federal governmental plans, unless permitted by law

Each contract or other arrangement for coverage described above is a separate plan. If a plan has 2 parts and COB rules apply to only one of the 2, each of the parts is treated as a separate plan.

**Complying plan** is a plan that complies with these COB rules.

**Non-complying plan** is a plan that does not comply with these COB rules.

**Claim** means a request that benefits of a plan be provided or paid.

**Allowable expense** means a dental expense, including cost sharing, that is covered at least in part by any plan covering the member. When a plan provides benefits in the form of a service rather than cash payments, the reasonable cash value of the service will also be considered an allowable expense and a benefit paid. An expense that is not covered by any plan covering the member is not an allowable expense. In addition, any expense that a provider by law or in

accordance with a contractual agreement is prohibited from charging a member is not an allowable expense.

The following are examples of expenses that are **not** allowable expenses:

- a. The amount of the reduction by the primary plan because a member has failed to comply with the plan provisions concerning second opinions or prior authorization of services, or because the member has a lower benefit due to not using an in-network provider
- b. Any amount in excess of the highest reimbursement amount for a specific benefit, if a member is covered by 2 or more plans that compute their benefit payments on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology
- c. Any amount in excess of the highest of the negotiated fees, if a member is covered by 2 or more plans that provide benefits or services on the basis of negotiated fees
- d. If a member is covered by one plan that calculates its benefits or services on the basis of usual and customary fees or relative value schedule reimbursement methodology or other similar reimbursement methodology and another plan that provides its benefits or services on the basis of negotiated fees, the primary plan's arrangement shall be the allowable expense for all plans. However, if the provider has contracted with the secondary plan to provide the benefit or service for a specific negotiated fee or payment amount that is different than the primary plan's payment arrangement and if the provider's contract permits, the negotiated fee or payment shall be the allowable expense used by the secondary plan to determine its benefits

**This Plan** is the group dental benefit plan that provides benefits for dental expenses to which the COB provision applies and which may be reduced because of the benefits of other plans. Any other part of the group health plan providing dental benefits is separate from this Plan. A group health plan may apply one COB provision to certain benefits, coordinating only with similar benefits, and may apply another COB provision to coordinate other benefits.

**Closed panel plan** is a plan that provides dental benefits to covered persons primarily in the form of services through a network of providers that have contracted with or are employed by the plan, and that excludes coverage for services provided by other providers, except in cases of emergency or referral by an in-network provider.

**Custodial parent** is the parent awarded custody by a court decree or, in the absence of a court decree, is the parent with whom the child resides more than one half of the calendar year excluding any temporary visitation.

## 15.2 HOW COB WORKS

If the member is covered by another plan or plans, the benefits under this Plan and the other plan(s) will be coordinated. This means one plan pays its full benefits first, then any other plans pay. The order of benefit determination rules govern the order in which each plan will pay a claim for benefits.

The **primary plan** (the plan that pays benefits first) pays the benefits that would be payable under its terms in the absence of this provision.

The **secondary plan** (the plan that pays benefits after the primary plan) will reduce the benefits it pays so that payments from all plans do not exceed 100% of the total allowable expense.

This Plan will coordinate with a plan that is "excess" or "always secondary" or that uses order of benefit determination rules that are inconsistent with those contained in OAR 836-020-0770 to 836-020-0805 (non-complying plan) on the following basis:

- a. If this Plan is primary, it will provide its benefits first
- b. If this Plan is secondary and the non-complying plan does not provide its primary payment information within a reasonable time after it is requested to do so, this Plan will assume that the benefits of the non-complying plan are identical to this Plan's benefits. This Plan will provide its benefits first, but the amount of the benefits payable shall be determined as if this Plan were the secondary plan
- c. If the non-complying plan reduces its benefits so that the member receives less in benefits than he or she would have received had this Plan provided its benefits as the secondary plan and the non-complying plan provided its benefits as the primary plan, then this Plan shall advance additional benefits equal to the difference between the amount that was actually paid and the amount that should have been paid if the non-complying plan had not improperly reduced its benefits. Additional payment will be limited so that this Plan will not pay any more than it would have paid if it had been the primary plan. In consideration of such an advance, this Plan shall be subrogated to all rights of the member against the non-complying plan

### **15.3 ORDER OF BENEFIT DETERMINATION (WHICH PLAN PAYS FIRST?)**

The first of the following rules that applies will govern:

- a. **Non-dependent/Dependent.** If a plan covers the member as other than a dependent, for example, an employee, member of an organization, primary insured, or retiree, then that plan will determine its benefits before a plan which covers the member as a dependent.
- b. **Dependent Child/Parents Married, Registered Domestic Partners, or Living Together.** If the member is a dependent child whose parents are married, registered domestic partners, or are living together whether or not they have ever been married or registered domestic partners, the plan of the parent whose birthday falls earlier in the calendar year is the primary plan. If both parents' birthdays are on the same day, the plan that has covered the parent the longest is the primary plan. (This is called the 'Birthday Rule'.)
- c. **Dependent Child/Parents Separated or Divorced or Not Living Together.** If the member is a dependent child of divorced or separated parents, or parents not living together whether or not they have ever been married or registered domestic partners, then the following rules apply:
  - i. If a court decree states that one of the parents is responsible for the healthcare expenses of the child, and the plan of that parent has actual knowledge of those terms, that plan is primary. This rule applies to plan years commencing after the plan is given notice of the court decree.
  - ii. If a court decree states that both parents are responsible for the healthcare expenses of the child, or that the parents have joint custody without specifying that one parent is responsible, the 'birthday rule' described above applies.

- iii. If there is not a court decree allocating responsibility for the child's healthcare expenses, the order of benefits is as follows:
  - A. The plan covering the custodial parent;
  - B. The plan covering the spouse or domestic partner of the custodial parent;
  - C. The plan covering the non-custodial parent; and then
  - D. The plan covering the spouse or domestic partner of the non-custodial parent.
- d. **Dependent Child Covered by Individual Other than Parent.** For a dependent child covered under more than one plan of persons who are not the parents of the child, the first applicable provision (b. or c.) above shall determine the order of benefits as if those persons were the parents of the child.
- e. **Active/Retired or Laid Off Employee.** The plan that covers a member as an active employee, that is, one who is neither laid off nor retired (or as that employee's dependent) determines its benefits before those of a plan that covers the member as a laid off or retired employee (or as that employee's dependent). If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of the benefits, this rule is ignored.
- f. **COBRA or State Continuation Coverage.** If a member whose coverage is provided under COBRA or under a right of continuation provided by state or other federal law is covered under another plan, the plan covering the member as an employee, member of an organization, subscriber, or retiree or as a dependent of the same, is the primary plan and the COBRA or other continuation coverage is the secondary plan. If the other plan does not have this rule, and if, as a result, the plans do not agree on the order of the benefits, this rule is ignored.
- g. **Longer/Shorter Length of Coverage.** The plan that covered a member longer is the primary plan and the plan that covered the member for the shorter period of time is the secondary plan.
- h. **None of the Above.** If the preceding rules do not determine the order of benefits, the allowable expenses shall be shared equally between the plans. In addition, this Plan will not pay more than it would have paid had it been the primary plan.

#### 15.4 EFFECT ON THE BENEFITS OF THIS PLAN

In determining the amount to be paid for any claim, the secondary plan will calculate the benefits it would have paid in the absence of other dental coverage and apply that calculated amount to any allowable expense under its plan that is unpaid by the primary plan. The secondary plan shall credit to its plan deductible any amounts it would have credited to its deductible in the absence of other dental coverage.

If the primary plan is a closed panel plan and the member uses an out-of-network provider, the secondary plan shall provide benefits as if it were the primary plan, except for emergency services or authorized referrals that are paid or provided by the primary plan.

#### 15.5 ODS' RIGHT TO COLLECT AND RELEASE NEEDED INFORMATION

In order to receive benefits, the member must give ODS any information needed to pay benefits. ODS may release to or collect from any person or organization any needed information about the member.

## **15.6 CORRECTION OF PAYMENTS**

If benefits that this Plan should have paid are instead paid by another plan, this Plan may reimburse the other plan. Amounts reimbursed are plan benefits and are treated like other plan benefits in satisfying the Plan's liability.

## **15.7 RIGHT OF RECOVERY**

If the Plan pays more for a covered expense than is required by the Plan, the excess payment may be recovered from:

- a. The subscriber
- b. Any person to whom the payment was made
- c. Any insurance company, service plan or any other organization that should have made payment

## **SECTION 16. MISCELLANEOUS PROVISIONS**

### **16.1 REQUEST FOR INFORMATION**

When necessary to process claims, ODS may require a member to submit information concerning benefits to which he or she is entitled. ODS may also require a member to authorize any provider to give ODS information about a condition for which a member claims benefits.

### **16.2 DISCLOSURE OF BENEFIT REDUCTION**

The Plan will provide notification of material reductions in covered services or benefits to the Group no later than 60 days after the adoption of the change.

### **16.3 CONFIDENTIALITY OF MEMBER INFORMATION**

Keeping a member's protected health information confidential is very important to the Group. Protected health information includes enrollment, claims, and medical and dental information. Such information is used internally for claims payment, referrals and authorization of services, and business operations such as case management and quality management programs. ODS does not sell this information. The Notice of Privacy Practices provides more detail about how the Group uses such information. ODS, as the third party administrator, is required to adhere to these same practices. Members can contact the Group regarding additional questions about the privacy of their information beyond that provided in the Notice of Privacy Practices.

### **16.4 TRANSFER OF BENEFITS**

Only members are entitled to benefits under the Plan. These benefits are not assignable or transferable to anyone else. Any attempted assignment or transfer will not be binding on ODS nor the Plan, except that ODS shall pay amounts due under the Plan directly to a provider upon a member's written request.

### **16.5 RECOVERY OF BENEFITS PAID BY MISTAKE**

If the Plan makes a payment for a member to which he or she is not entitled, or pays a person who is not eligible for payments at all, the Plan has the right to recover the payment from the person paid or anyone else who benefited from it, including a provider. The Plan's right to recovery includes the right to deduct the amount paid from future benefits it would provide for a member even if the payment was not made on that member's behalf.

### **16.6 CONTRACT PROVISIONS**

The agreement between the Group and ODS and this handbook plus any endorsements or amendments are the entire contract between the parties. No promises, terms, conditions or

obligations exist other than those contained in the contract. This handbook and the agreement plus any endorsements or amendments shall supersede all other communications, representations or agreements, either verbal or written between the parties.

## **16.7 WARRANTIES**

All statements made by the Group or a member, unless fraudulent, are considered representations and not warranties. No statement made for the purpose of obtaining coverage will void the coverage or reduce benefits unless contained in a written form and signed by the Group or the member, a copy of which has been given to the Group or member or the member's beneficiary.

## **16.8 LIMITATION OF LIABILITY**

ODS shall incur no liability whatsoever to any member concerning the selection of dentists to render services. In performing or contracting to perform dental service, such dentists shall be solely responsible, and in no case shall ODS be liable for the negligence of any dentist rendering such services. Nothing contained in the agreement between ODS and the Group shall be construed as obligating ODS to render dental services.

## **16.9 PROVIDER REIMBURSEMENTS**

Dental care providers contracting with ODS to provide services to members agree to look only to ODS for payment of the part of the expense that is covered by the Plan and may not bill the member in the event the Plan fails to pay the provider for whatever reason. The provider may bill the member for applicable copayments or coinsurance and deductibles or non-covered expenses except as may be restricted in the provider contract.

## **16.10 INDEPENDENT CONTRACTOR DISCLAIMER**

ODS and participating dentists are independent contractors. ODS and participating dentists do not have a relationship of employer and employee nor of principal and agent. No relationship other than that of independent parties contracting with each other solely for the purpose of a participating dentist's provision of dental care to members may be deemed or construed to exist between ODS and participating dentists. A participating dentist is solely responsible for the dental care provided to any member, and ODS does not control the detail, manner or methods by which a participating dentist provides care.

## **16.11 NO WAIVER**

Any waiver of any provision of the Plan, or any performance under the Plan, must be in writing and signed by the waiving party. Any such waiver shall not operate as, or be deemed to be, a waiver of any prior or future performance or enforcement of that provision or any other provision. If ODS delays or fails to exercise any right, power or remedy provided in the Plan,

including a delay omission in denying a claim, that shall not waive the Plan's rights to enforce the provisions of the Plan.

#### **16.12 GROUP IS THE AGENT**

The Group is the members' agent for all purposes under the Plan. The Group is not the agent of ODS.

#### **16.13 GOVERNING LAW**

To the extent the Plan is governed by state law, it shall be governed by and construed in accordance with the laws of the state of Oregon.

#### **16.14 WHERE ANY LEGAL ACTION MUST BE FILED**

Any legal action arising out of the Plan must be filed in either state or federal court in the state of Oregon.

#### **16.15 TIME LIMITS FOR FILING A LAWSUIT**

Any legal action arising out of, or related to, the Plan and filed against ODS or the Plan by a member or any third party must be filed in court within 3 years of the time the claim arose. All internal levels of appeal under the Plan must be exhausted before filing a claim in court.

## SECTION 17. CONTINUATION OF DENTAL COVERAGE

### IMPORTANT NOTICE

The following sections on continuation of coverage may apply. Members should check with their employer's Risk & Benefits Division to find out whether they qualify for this coverage. Both subscribers and their dependents should read the following sections carefully.

#### 17.1 OREGON CONTINUATION COVERAGE FOR SPOUSES & DOMESTIC PARTNERS AGE 55 AND OVER

##### 17.1.1 Introduction

The Plan offers enrolled spouses and domestic partners the opportunity to request a temporary extension of dental coverage for themselves and their dependents if coverage is lost due to a specific event identified in the following paragraphs.

55+ Oregon Continuation only applies to employers with 20 or more employees. The Plan will provide 55+ Oregon Continuation coverage to those members who elect it, subject to the following conditions:

- a. The Plan will offer no greater rights than ORS 743.600 to 743.602 requires
- b. The Plan will not provide 55+ Oregon Continuation coverage for members who do not comply with the requirements outlined below
- c. The Group or its designated third party administrator is responsible for providing the required notices within the statutory time periods, including the notice of death and the election notice. If the Group or its designated third party administrator fails to notify the eligible spouse or domestic partner, premiums shall be waived from the date the notice was required until the date notice is received by the spouse or domestic partner. The Group shall be responsible for such premiums

Note: In section 17.1 the term "domestic partner" refers only to a registered domestic partner, as defined in Section 3.

##### 17.1.2 Eligibility Requirements for 55+ Oregon Continuation Coverage

The spouse or domestic partner of the subscriber may elect 55+ Oregon Continuation coverage for himself or herself and any enrolled dependents if the following requirements are met:

- a. Coverage is lost because of the death of the subscriber, dissolution of marriage or domestic partnership with the subscriber, or legal separation from the subscriber;
- b. The spouse or domestic partner is 55 years of age or older at the time of such event; and
- c. The spouse or domestic partner is not eligible for Medicare.

##### 17.1.3 Notice and Election Requirements for 55+ Oregon Continuation Coverage

**Notice of Divorce, Dissolution, or Legal Separation.** Within 60 days of legal separation or the entry of a judgment of dissolution of marriage or domestic partnership, a legally separated or divorced spouse or domestic partner who is eligible for 55+ Oregon Continuation and seeks

such coverage shall give the Group or its designated third party administrator written notice of the legal separation or dissolution. The notice shall include his or her mailing address.

**Notice of Death.** Within 30 days of the death of the subscriber whose surviving spouse or domestic partner is eligible for 55+ Oregon Continuation, the Group shall give the designated third party administrator, if any, written notice of the death and the mailing address of the surviving spouse or domestic partner.

**Election Notice.** Within 14 days of receipt of the above notice (or within 44 days of the death of the subscriber if there is no third party administrator), the Group or its designated third party administrator shall provide notice to the surviving, legally separated or divorced spouse or domestic partner that coverage can be continued, along with an election form. If the Group or its designated third party administrator fails to provide this election notice within the required 14 days (or 44 days if there is no third party administrator), premiums shall be waived until the date notice is received.

**Election.** The surviving, legally separated or divorced spouse or domestic partner, must return the election form within 60 days after the form is mailed. Failure to exercise this election within 60 days of the notification shall terminate the right to continued benefits under this section.

#### **17.1.4 Premiums for 55+ Oregon Continuation Coverage**

The monthly premiums for 55+ Oregon Continuation are limited to 102% of the premiums paid by a current subscriber. The first premiums shall be paid by the surviving, legally separated or divorced spouse or domestic partner to the Group or its designated third party administrator within 45 days of the date of election. All remaining monthly premiums must be paid within 30 days of the premium due date.

#### **17.1.5 When 55+ Oregon Continuation Coverage Ends**

55+ Oregon Continuation will end on the earliest of any of the following events:

- a. Failure to pay premiums when due, including any grace period allowed by the Plan
- b. The date the Plan terminates, unless a different group policy is made available to Group members
- c. The date the member becomes covered under any other group dental plan;
- d. The date the member remarries or registers another domestic partnership and becomes covered under another group dental plan
- e. The date the member becomes eligible for Medicare

## **17.2 COBRA CONTINUATION COVERAGE**

### **17.2.1 Introduction**

COBRA only applies to employers with 20 or more employees on 50% of the typical business days in the prior calendar year. The Plan will provide COBRA continuation coverage to members who have experienced a qualifying event and who elect coverage under COBRA, subject to the following conditions:

- a. The Plan will offer no greater COBRA rights than the COBRA statute requires;
- b. The Plan will not provide COBRA coverage for those members who do not comply with the requirements outlined below.

### 17.2.2 Qualifying Events

- a. **Subscriber.** A subscriber may elect continuation coverage if coverage is lost because of termination of employment (other than termination for gross misconduct, which may include misrepresenting immigration status to obtain employment), or a reduction in hours.
- b. **Spouse.** The spouse of a subscriber has the right to continuation coverage if coverage is lost for any of the following qualifying events:
  - i. Death of the subscriber
  - ii. Termination of the subscriber's employment (for reasons other than gross misconduct) or reduction in the subscriber's hours of employment with the Group
  - iii. Divorce or legal separation from the subscriber
  - iv. The subscriber becomes entitled to Medicare

(Also, if a subscriber eliminates coverage for his or her spouse in anticipation of a divorce or legal separation, and a divorce or legal separation later occurs, then the later divorce or legal separation will be considered a qualifying event even though the ex-spouse lost coverage earlier. If the ex-spouse notifies the COBRA Administrator within 60 days of the later divorce or legal separation and can establish that the coverage was eliminated earlier in anticipation of the divorce or legal separation, then COBRA coverage may be available for the period after the divorce or legal separation.)

**Note:** Longer continuation coverage may be available under Oregon Law for a subscriber's spouse or registered domestic partner age 55 and older who loses coverage due to the subscriber's death, or due to legal separation or dissolution of marriage or domestic partnership (see section 17.1).

- c. **Children.** A child of a subscriber has the right to continuation coverage if coverage is lost for any of the following qualifying events:
  - i. death of the subscriber
  - ii. termination of the subscriber's employment (for reasons other than gross misconduct) or reduction in the subscriber's hours of employment with the Group
  - iii. Parents' divorce or legal separation
  - iv. The subscriber becomes entitled to Medicare
  - v. The child ceases to be a "child" under the Plan
- d. **Domestic Partners.** A subscriber, who at the time of the qualifying event was covering his or her domestic partner under the Plan, can elect COBRA continuation coverage that includes continuing coverage for the domestic partner. A domestic partner who is covered under the Plan by the subscriber is not an eligible member and, therefore, does not have an independent election right under COBRA. This also means that the domestic partner's coverage ceases immediately when the subscriber's COBRA coverage terminates (for example, due to the subscriber's death or because the subscriber becomes covered under another plan).

### 17.2.3 Other Coverage

The right to elect continuation coverage shall be available to persons who are covered under another group dental plan at the time of the election.

#### **17.2.4 Notice and Election Requirements**

**Qualifying Event Notice.** The Plan provides that a dependent member's coverage terminates as of the last day of the month in which a divorce or legal separation occurs (spouse's coverage is lost) or a child loses dependent status under the Plan (child loses coverage). Under COBRA, the subscriber or a family member has the responsibility to notify the County's Risk and Benefits Division if one of these events occurs by mailing or hand-delivering a written notice to the COBRA Administrator. The notice must include the following: 1) the name of the Group; 2) the name and social security number of the affected members; 3) the event (e.g. divorce); and 4) the date the event occurred. Notice must be given no later than 60 days after the loss of coverage under the Plan. If notice of the event is not given on time, continuation coverage will not be available.

**Election Notice.** Members will be notified of their right to continuation coverage within 14 days after the COBRA Administrator receives a timely qualifying event notice.

Otherwise, members will be notified by the COBRA Administrator of the right to elect COBRA continuation coverage within 44 days of any of the following events that result in a loss of coverage: the subscriber's termination of employment (other than for gross misconduct), reduction in hours, death of the subscriber, the subscriber's becoming entitled to Medicare.

**Election.** A member must elect continuation coverage within 60 days after plan coverage ends, or, if later, 60 days after the COBRA Administrator sends notice of the right to elect continuation coverage to the member. If continuation coverage is not elected, group dental coverage will end.

A subscriber or the spouse may elect continuation coverage for eligible family members. However, each family member has an independent right to elect COBRA coverage. This means that a spouse or child may elect continuation coverage even if the subscriber does not.

#### **17.2.5 COBRA Premiums**

Those eligible for continuation coverage do not have to show that they are insurable. However, they are responsible for all premiums for continuation coverage. The first payment for continuation coverage is due within 45 days after a member provides notice of electing coverage (this is the date the election notice is postmarked, if mailed, or the date the election notice is received by the COBRA Administrator if hand delivered). This payment must include the amount necessary to cover all months that have elapsed between the date regular coverage ended and the payment date. Subsequent payments are due on the first day of the month; however, there will be a grace period of 30 days to pay the premiums. The Plan will not send a bill for any payments due. The member is responsible for paying the applicable premiums, in good funds, when due; otherwise continuation coverage will end and may not be reinstated. The premium rate may include a 2% add-on to cover administrative expenses.

#### **17.2.6 Length of Continuation Coverage**

If COBRA is elected, the Group will provide the same coverage as is available to similarly situated members under the Plan.

**18-Month Continuation Period.** In the case of a loss of coverage due to end of employment or a reduction of hours of employment, coverage generally may be continued for up to a total of 18 months.

**36-Month Continuation Period.** In the case of losses of coverage due to a subscriber's death, divorce or legal separation, or a child ceasing to be a dependent under the terms of the Plan, coverage under the Plan may be continued for up to a total of 36 months.

When the qualifying event is the end of employment or reduction of the subscriber's hours of employment, and the subscriber became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA coverage under the Plan for members other than the subscriber who lose coverage as a result of the qualifying event can last up to 36 months after the date of Medicare entitlement. This COBRA coverage period is available only if the subscriber becomes entitled to Medicare within 18 months **before** the termination or reduction of hours.

**Extended Period.** In the case of loss of coverage due to the bankruptcy of the Group, coverage for the retired subscriber may be continued up to his or her death; coverage for each dependent may be continued up to the dependent's death or 36 months after the retired subscriber's death, whichever is earlier.

#### **17.2.7 Extending the Length of COBRA Coverage**

If COBRA is elected, an extension of the maximum period of coverage may be available if a member is disabled or a second qualifying event occurs. The COBRA Administrator must be notified of a disability or a second qualifying event in order to extend the period of COBRA coverage. If the member fails to provide notice of a disability or second qualifying event, he or she will lose the right to extend the period of COBRA coverage.

**Disability.** If any of the members is determined by the Social Security Administration to be disabled, the maximum COBRA coverage period that results from a subscriber's termination of employment or reduction of hours may be extended to a total of up to 29 months. The disability must have started at some time before the 61<sup>st</sup> day after the subscriber's termination of employment or reduction of hours and must last at least until the end of the period of COBRA coverage that would be available without the disability extension (generally 18 months). Each member who has elected COBRA coverage will be entitled to the disability extension if one of them qualifies.

The disability extension is available only if the COBRA Administrator is notified in writing of the Social Security Administration's determination of disability within 60 days after the latest of:

- a. the date of the Social Security Administration's disability determination
- b. the date of the subscriber's termination of employment or reduction of hours
- c. the date on which the member loses (or would lose) coverage under the terms of the Plan as a result of the subscriber's termination or reduction of hours

A member must provide the COBRA Administrator a copy of the Social Security Administration's determination within the 18-month period following the subscriber's termination of employment or reduction of hours, and not later than 60 days after the Social Security Administration's determination was made. If the notice is not provided within this timeframe, then there will be no disability extension of COBRA coverage. The premiums for COBRA coverage may increase after the 18th month of coverage to 150% of the premium.

If determined by the Social Security Administration to no longer be disabled, the member must notify the COBRA Administrator of that fact within 30 days after the Social Security Administration's determination.

**Second Qualifying Event.** An extension of coverage will be available to spouses and children who are receiving COBRA coverage if a second qualifying event occurs during the 18 months (or, in the case of a disability extension, the 29 months) following the subscriber's termination of employment or reduction of hours. The maximum amount of COBRA coverage available when a second qualifying event occurs is 36 months from the date of the first qualifying event. Such second qualifying events may include the death of a subscriber, divorce or legal separation from the subscriber, or a child ceasing to be eligible for coverage as a dependent under the Plan. These events can be a second qualifying event only if they would have caused the member to lose coverage under the Plan if the first qualifying event had not occurred. (This extension is not available under the Plan when a subscriber becomes entitled to Medicare after his or her termination of employment or reduction of hours.)

This extension due to a second qualifying event is available only if the COBRA Administrator is notified in writing of the second qualifying event within 60 days after the date of the second qualifying event. If this notice is not provided to the COBRA Administrator during the 60-day notice period, then there will be no extension of COBRA coverage due to a second qualifying event.

**Note:** Longer continuation coverage may be available under Oregon Law for a subscriber's spouse or domestic partner age 55 and older who loses coverage due to the subscriber's death, or due to legal separation or dissolution of marriage or domestic partnership (see section 17.1).

#### **17.2.8 Newborn or Adopted Child**

If, during continuation coverage, a child is born to or placed for adoption with the subscriber, the child is considered an eligible member. The subscriber may elect continuation coverage for the child provided the child satisfies the otherwise applicable plan eligibility requirements (for example, age). The subscriber or a family member must notify the COBRA Administrator within 31 days of the birth or placement to obtain continuation coverage. If the subscriber or family member fails to notify the COBRA Administrator in a timely fashion, the child will not be eligible for continuation coverage.

#### **17.2.9 Special Enrollment and Open Enrollment**

Members under continuation coverage have the same rights as similarly situated members who are not enrolled in COBRA. A member may add newborns, new spouses, or domestic partners, and adopted children (or children placed for adoption) as covered dependents in accordance with the Plan's eligibility and enrollment rules, including HIPAA special enrollment. If non-COBRA members can change plans at open enrollment, COBRA members may also change plans at open enrollment.

#### **17.2.10 When Continuation Coverage Ends**

COBRA coverage will automatically terminate before the end of the maximum period if:

- a. any required premiums are not paid in full on time
- b. a member becomes covered under another group dental plan
- c. a member becomes entitled to Medicare benefits (under Part A, Part B, or both) after electing COBRA
- d. the Group ceases to provide any group dental plan for its employees
- e. during a disability extension period (see section 17.2.7), the disabled member is determined by the Social Security Administration to be no longer disabled (COBRA coverage for all members, not just the disabled member, will end)

COBRA coverage may also be terminated for any reason the Plan would terminate coverage of a member not receiving COBRA coverage (such as fraud).

Questions about COBRA should be directed to the COBRA Administrator. The COBRA Administrator should be informed of any address changes.

### **17.3 UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**

Coverage will terminate if a subscriber is called to active duty by any of the armed forces of the United States of America. However, if a subscriber requests to continue coverage under USERRA, coverage can be continued for up to 24 months or the period of uniformed service leave, whichever is shortest, if the subscriber pays any required contributions toward the cost of the coverage during the leave. If the leave is 30 days or less, the contribution rate will be the same as for active employees. If the leave is longer than 30 days, the required contribution will not exceed 102% of the cost of coverage.

If a subscriber does not elect continuation coverage under USERRA or if continuation coverage is terminated or exhausted, coverage will be reinstated on the first day he or she returns to active employment with the Group if released under honorable conditions, but only if he or she returns to active employment:

- a. On the first full business day following completion of his or her military service for a leave of 30 days or less;
- b. Within 14 days of completing military service for a leave of 31 to 180 days; or
- c. Within 90 days of completing military service for a leave of more than 180 days.

Regardless of the length of the leave, a reasonable amount of travel time or recovery time for an illness or injury determined by the Veteran's Administration (VA) to be service connected will be allowed.

When coverage under the Plan is reinstated, all plan provisions and limitations will apply to the extent that they would have applied if the subscriber had not taken military leave and coverage had been continuous under the Plan. There will be no additional eligibility waiting period. (This waiver of limitations does not provide coverage for any illness or injury caused or aggravated by military service, as determined by the VA. Complete information regarding rights under USERRA is available from the Group).

### **17.4 FAMILY AND MEDICAL LEAVE**

If the Group grants a leave of absence under state or federal family and medical leave laws, the following rules will apply:

- a. Affected members will remain eligible for coverage during a family and medical leave
- b. A subscriber's rights under family and medical leave will be governed by applicable state or federal statute and regulations
- c. If members elect not to remain enrolled during a family and medical leave, they will be eligible to re-enroll in the Plan on the date the subscriber returns from leave. To re-enroll, a complete and signed application must be submitted within 60 days of the

return to work. All of the terms and conditions of the Plan will resume at the time of re-enrollment as if there had been no lapse in coverage. Any group eligibility waiting period under the Plan will not have to be re-served

### **17.5 LEAVE OF ABSENCE**

If granted a leave of absence by the Group, a subscriber may continue coverage for up to the amount of time specified by the group. Premiums must be paid to the Group in order to maintain coverage during a leave of absence.

A leave of absence is a period off work granted by the Group at a subscriber's request during which he or she is still considered to be employed and is carried on the employment records of the Group. A leave can be granted for any reason acceptable to the Group.

### **17.6 STRIKE OR LOCKOUT**

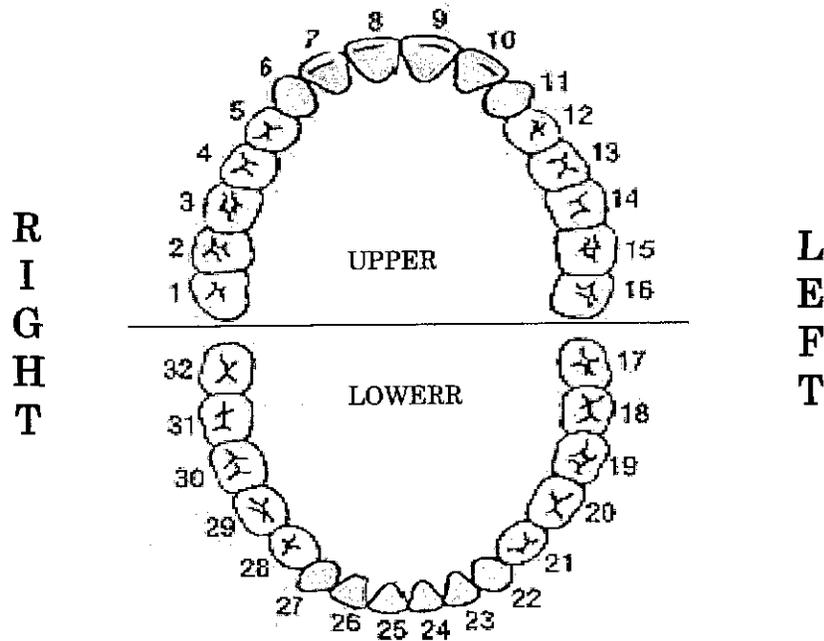
If employed under a collective bargaining agreement and involved in a work stoppage because of a strike or lockout, a subscriber may continue coverage for up to 6 months. The subscriber must pay the full premiums, including any part usually paid by the Group, directly to the union or trust, and the union or trust must continue to pay the Group the premiums when due.

Continuation of coverage during a strike or lockout will not occur if:

- a. Fewer than 75% of those normally enrolled choose to continue their coverage
- b. A subscriber accepts full-time employment with another employer
- c. A subscriber otherwise loses eligibility under the Plan

## SECTION 18. TOOTH CHART

### THE PERMANENT ARCH



Note: Anterior teeth are shaded gray.

The Permanent Arch		
Tooth #		Description of Tooth
Upper	Lower	
1	17	3rd Molar (wisdom tooth)
2	18	2nd Molar (12-yr molar)
3	19	1st Molar (6-yr molar)
4	20	2nd Bicuspid (2nd premolar)
5	21	1st Bicuspid (1st premolar)
6	22	Cuspid (canine/eye tooth)
7	23	Lateral Incisor
8	24	Central Incisor
9	25	Central Incisor
10	26	Lateral Incisor
11	27	Cuspid (canine/eye tooth)
12	28	1st Bicuspid (1st premolar)
13	29	2nd Bicuspid (2nd premolar)
14	30	1st Molar (6-yr molar)
15	31	2nd Molar (12-yr molar)
16	32	3rd Molar (wisdom tooth)



For help, call us directly at 888-217-2365.  
(En Español: 877-299-9063)

P.O. Box 40384  
Portland, OR 97240  
[modahealth.com](http://modahealth.com)



**GARY BARTH**  
DIRECTOR

**BUSINESS AND COMMUNITY SERVICES**

February 27, 2014

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

Board of County Commissioner  
Clackamas County

Members of the Board:

Resolution Authorizing Clackamas County Parks to Apply for an Oregon Parks and Recreation Department Land and Water Conservation Fund Grant for Barton Park Fire Pond Rehabilitation and Delegates the Business and Community Services Director Authority to Sign the Grant Application

<b>Purpose/Outcomes</b>	Barton Parks' fire protection pond is in need of rehabilitation. The natural bed of the pond is cracking and cannot maintain adequate water levels necessary for fire protection needs during the peak fire season. Funding from the Oregon Parks and Recreation Land and Water Conservation Fund Grant Program will provide for 50% of costs necessary to rehabilitate the fire pond.
<b>Dollar Amount and Fiscal Impact</b>	The project cost is estimated at \$80,000 with 50% each coming from County Parks and OR Parks and Recreation grant funds. County Parks has matching funds budgeted in the current 2013/14 FY. These funds will need to roll forward to the 2014/15 FY budget since grant award is not scheduled until after July 1, 2014. Project completion would be during FY 2014/15
<b>Funding Source</b>	County Parks Budget fund 213
<b>Safety Impact</b>	This project will provide for fire protection throughout the 116 acre Barton Park facility.
<b>Duration</b>	Project duration would be approximately 2 months from start to finish
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Rick Gruen, County Parks & Forest Manager 503-742-4345
<b>Contract No.</b>	N/A

**BACKGROUND:**

Clackamas County's Barton Park provides camping and day-use activities along the Clackamas River. The park is 116 acres and has an existing fire protection pond in the east campground. The existing condition of the pond is not adequate to ensure water levels sufficient for fire suppression needs in the event of a wildfire at the campground. This project would include draining the pond, regrading and preparing the surface and installing a pond liner to maintain sufficient water levels.

**RECOMMENDATION:**

Staff recommends Board approval of a Resolution Authorizing Clackamas County Parks to apply for an Oregon Parks and Recreation Department Land and Water Conservation Fund Grant for Barton Park Fire Pond Rehabilitation, and to delegate the Business and Community Services Director authority to sign the grant application.

Respectfully submitted,

Gary Barth, Director of Business and Community Services

**VanDuzer, Chris**

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**From:** Krupp, Don  
**Sent:** Tuesday, February 18, 2014 7:17 AM  
**To:** Barth, Gary  
**Cc:** Gruen, Rick; VanDuzer, Chris; Meurs, Lisa; Zentner, Laura; Newton, Nancy  
**Subject:** RE: County Parks Request for Approval to Apply for State Grant Funds - Barton Fire Pond Rehabilitation

AOK to proceed

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**From:** Barth, Gary  
**Sent:** Sunday, February 16, 2014 4:49 PM  
**To:** Krupp, Don  
**Cc:** Gruen, Rick; VanDuzer, Chris; Meurs, Lisa; Zentner, Laura  
**Subject:** Fwd: County Parks Request for Approval to Apply for State Grant Funds - Barton Fire Pond Rehabilitation

Don

Request your approval for County Parks Division within BCS to apply for a Oregon Parks LWCG to rehab a fire protection pond at Barton Park to ensure we have adequate water supply for fire suppression needs.

Gary

Begin forwarded message:

**From:** "VanDuzer, Chris" <[ChrisVan@co.clackamas.or.us](mailto:ChrisVan@co.clackamas.or.us)>  
**Date:** February 12, 2014 at 12:07:40 PM PST  
**To:** "Barth, Gary" <[GaryBar@co.clackamas.or.us](mailto:GaryBar@co.clackamas.or.us)>  
**Cc:** "Gruen, Rick" <[RGruen@co.clackamas.or.us](mailto:RGruen@co.clackamas.or.us)>  
**Subject:** County Parks Request for Approval to Apply for State Grant Funds - Barton Fire Pond Rehabilitation

Hi Gary –

County Parks is requesting approval to apply for funding through Oregon Parks & Recreation Land and Water Conservation Grant program, for the rehabilitation of the Barton Park fire protection pond.

My understanding is we need to present this to Don Krupp for the ok, before we take it to the BCC. Please pass along to Don if you would on County Parks behalf.

Thank you,

Christina Van Duzer  
Administrative Analyst, Sr.  
Clackamas County Parks & Forest  
150 Beaver Creek Road  
Oregon City, OR 97045  
503.742.4663 (w)  
503.742.4420 (f)

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

In the Matter of a Resolution Authorizing  
Clackamas County Parks to Apply for an  
Oregon Parks and Recreation Department  
Land and Water Conservation Fund  
Grant for Barton Park Fire Pond  
Rehabilitation and Delegates the Business  
And Community Services Director Authority  
to Sign the Grant Application

RESOLUTION NO.

This matter coming regularly before the Board of County Commissioners, and it appearing that the Oregon Parks and Recreation Department is accepting applications for the Land and Water Conservation Fund Grant Program; and

**WHEREAS**, Clackamas County Parks desires to participate in the grant program as a means of providing needed park funding to rehabilitate an existing fire protection pond located in the County's Barton Park; and

**WHEREAS**, Barton Park is a County recreational facility providing overnight camping and day-use activities along the Clackamas River, and based on the fire protection plan produced by MIG and Trout Mountain Forestry, this capital improvement project was identified by the County Parks Advisory Board as a high priority for fire protection within the 116 acre park; and

**WHEREAS**, County Parks has matching funds for this application in the 2013-14 approved capital budget along with funds allocated for continued operations and maintenance needs of Barton Park if grant funds should be awarded; and

**NOW, THEREFORE**, IT IS HEREBY RESOLVED that Clackamas County Parks be authorized to apply for an Oregon Parks and Recreation Department Land and Water Conservation Fund Grant for up to \$40,000 in funding for the Barton Park Fire Pond Rehabilitation, and the Board of County Commissioners authorizes the Business and Community Services Director to sign the grant application.

Dated this \_\_\_\_\_ day of February 2014

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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



DAN JOHNSON  
MANAGER

**DEVELOPMENT AGENCY**

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

February 27, 2014

Development Agency Board  
Clackamas County

Members of the Board:

AUTHORIZATION TO APPROVE UTILITY EASEMENTS

<b>Purpose/Outcome</b>	Granting authorization to the Board Chair to execute a number of minor utility easements.
<b>Dollar Amount and Fiscal Impact</b>	To be determined.
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Action/Review</b>	N/A
<b>Contact Person</b>	Dan Johnson, Development Agency Manager, 503 742-4325

**BACKGROUND:**

The Development Agency owns property located at 11805 SE Highway 212. The subject property contained a number of industrial buildings, two of which were recently relocated to the adjoining property to the west, owned by Emmert International. Relocation of these structures was necessary to allow for the construction of the Sunrise Corridor.

The adjoining property owner has requested approval of a number of minor utility easements from the subject property to provide service to the recently relocated structures. Provision of service is necessary to allow final placement and occupancy of the structures.

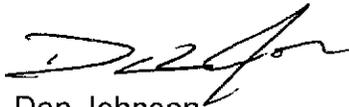
Though these easements are still in negotiations, they are planned to be of a width and in a location which shall have little or no impact on the subject property.

As approval of these easements is critical to the timing of construction and delivery of service to the structures in question, staff is requesting the Board authorize the Chair the ability to approve all utility related easements necessary to service the proposed structures.

**RECOMMENDATION:**

Staff respectfully recommends that the Development Agency Board authorize the chair to approve all utility related easements related to the placement and occupancy of the two structures recently relocated from the Development Agency property at 11805 SE Highway 212.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Johnson", written in a cursive style.

Dan Johnson,  
Development Agency Manager